



# City of Austin

## Purchasing Office

P.O. Box 1088, Austin, TX 78767

December 22, 2017

PNC Equipment Finance, LLC  
Attention: Michelle Gibbs  
155 E. Broad Street, 5<sup>th</sup> Floor  
Columbus, OH 43215  
Michelle.gibbs@pnc.com

Dear Ms. Gibbs:

The Austin City Council approved the execution of a contract with your company for Electric Golf Carts and Utility Golf Carts, Municipal Lease in accordance with the referenced solicitation.

Responsible Department:	Parks and Recreation Department
Department Contact Person:	Kevin Gomillion
Department Contact Email Address:	Kevin.Gomillion@austintexas.gov
Department Contact Telephone:	512-974-9351
Project Name:	Electric Golf Carts and Utility Golf Carts, Municipal Lease
Contractor Name:	PNC Equipment Finance, LLC
Contract Number:	MA 8600 GA180000008; Lease Schedule No. 209994000 and 210096000
Contract Period:	12/22/2017 – 12/21/21
Requisition Number:	RQM 8600 17052200539
Solicitation Type & Number:	RFP 8600 SMB0105
Agenda Item Number:	48
Council Approval Date:	12/7/17

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

  
Sandy Brandt  
Interim Procurement Supervisor  
City of Austin  
Purchasing Office

cc: Kevin Gomillion, Parks and Recreation Department  
Idella Wilson, Parks and Recreation Department  
Adam Harris, EZ Go

## MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

Dated as of December 22 , 2017

This Master Equipment Lease-Purchase Agreement (this "*Master Lease*") is made and entered into by and between PNC Equipment Finance, LLC ("*Lessor*") and the Lessee identified below ("*Lessee*").

Lessee: City of Austin

### 1. Lease of Equipment.

Subject to the terms and conditions of this Master Lease, Lessor agrees to sell, transfer and lease to Lessee, and Lessee agrees to acquire, purchase and lease from Lessor, all Equipment described in each Schedule signed from time to time by Lessee and Lessor. Each Schedule signed and delivered by Lessor and Lessee pursuant to this Master Lease shall constitute a separate and independent lease and installment purchase of the Equipment therein described. This Master Lease is not a commitment by Lessor or Lessee to enter into any Lease not currently in existence, and nothing in this Master Lease shall be construed to impose any obligation upon Lessor or Lessee to enter into any proposed Lease, it being understood that whether Lessor or Lessee enter into any proposed Lease shall be a decision solely within their respective discretion.

### 2. CERTAIN DEFINITIONS.

All terms defined in the Lease are equally applicable to both the singular and plural form of such terms.

(a) "*Equipment*" means the property described in each Schedule, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto. (b) "*Lease*" means each Schedule and the terms and conditions of this Master Lease incorporated therein. (c) "*Lien*" means any security interest, lien, mortgage, pledge, encumbrance, judgment, execution, attachment, warrant, writ, levy, other judicial process or claim of any nature whatsoever by or of any person. (d) "*Schedule*" means each Lease Schedule signed and delivered by Lessee and Lessor, together with all addenda, riders, attachments, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented and, in the case of a Tax-Exempt Lease, in substantially the form attached to this Master Lease as *Lease Schedule A* or, in the case of a Taxable Lease, under which Lessee finances its acquisition and installment purchase of the related Equipment during the term of such Lease on a non-federally tax-exempt basis, in substantially the form attached to this Master Lease as *Lease Schedule B* or, in the case of a Taxable Lease under which Lessee rents the use of the Equipment for the term of the Lease subject to Lessee's right to exercise its option to purchase such Equipment for its fair market value, in substantially the form attached to this Master Lease as *Lease Schedule C*. (e) "*Taxable Lease*" means a Lease that is not a Tax-Exempt Lease. (f) "*Tax-Exempt Lease*" means a Lease for which the interest component of Rent Payments is excludible from gross income of the owner or owners thereof for federal income tax purposes.

### 3. LEASE TERM.

The term of each Lease ("*Lease Term*") commences on, and interest accrues from, the date identified in the related Schedule as the Commencement Date and, unless earlier terminated as expressly provided in the Lease, continues until Lessee's payment and performance in full of all of Lessee's obligations under such Lease.

4. RENT PAYMENTS.

4.1. For each Lease, Lessee agrees to pay to Lessor the rent payments ("*Rent Payments*") in the amounts and on the dates set forth in the *Payment Schedule A-1* attached to the Schedule (a "*Payment Schedule*"). A portion of each Rent Payment under a Tax-Exempt Lease is paid as and represents the payment of interest as set forth in the applicable Payment Schedule. Rent Payments under each Lease are payable out of the general and other funds of Lessee that are legally available therefor ("*Legally Available Funds*") in U.S. dollars, without notice or demand, at the office of Lessor identified below (or such other place as Lessor may designate from time to time in writing).

4.2. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 6 HEREOF, AND EXCEPT AS SET OUT IN ARTICLE VIII, SECTION 1 OF THE AUSTIN CITY CHARTER AND SECTION 2-8-3 OF THE AUSTIN CITY CODE AS THEY MAY BE SUBSEQUENTLY AMENDED, LESSEE'S OBLIGATION TO PAY RENT PAYMENTS UNDER EACH LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS AND SHALL NOT BE SUBJECT TO ANY SETOFF, DEFENSE, COUNTERCLAIM, ABATEMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER, INCLUDING (WITHOUT LIMITATION) BY REASON OF EQUIPMENT FAILURE, DISPUTES WITH THE VENDOR(S) OR MANUFACTURER(S) OF THE EQUIPMENT OR LESSOR, ACCIDENT OR ANY UNFORESEEN CIRCUMSTANCES.

4.3. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent Payments under each Lease shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained in any Lease constitute a pledge of the full faith and credit or taxing power of Lessee.

4.4. If Lessor receives any Rent Payment from Lessee after its due date, Lessee shall pay Lessor as set forth in the Texas Prompt Payment Act, currently codified at Chapter 2251 of the Texas Government Code.

5. DELIVERY; ACCEPTANCE; FUNDING CONDITIONS.

5.1. Lessor will not be responsible for any expenses related to the transportation, delivery and installation of all Equipment to the location specified in the Schedule ("*Location*") by Equipment suppliers ("*Suppliers*") selected by Lessee.

5.2. Lessee shall accept Equipment for purposes of the related Lease as soon as it has been delivered and is operational. Lessee shall evidence its acceptance of any Equipment by signing and delivering to Lessor the applicable Schedule. If Lessee signs and delivers a Schedule and if all Funding Conditions have been satisfied in full, then Lessor will (a) pay or cause to be paid the costs to acquire and install the Equipment as stated in the Schedule ("*Purchase Price*") to the applicable Supplier or (b) reimburse Lessee for all or any portion of the Purchase Price to the extent previously paid by Lessee, in either case as Lessee shall direct.

5.3. Lessor shall have no obligation to pay any Purchase Price unless all reasonable conditions established by Lessor ("*Funding Conditions*") have been satisfied, including, the following: (a) Lessee has signed and delivered to Lessor the Schedule and its related Payment Schedule; (b) no Event of Default or Non-Appropriation Event shall have occurred and be continuing under any Lease; (c) the Equipment is reasonably satisfactory to Lessor and is free and clear of any Liens (except Lessor's Liens); (d) all representations of Lessee in the Lease remain true, accurate and complete; (e) the amount (if any) that Lessor may require in advance that Lessee apply to the payment of Equipment costs has been paid; and (f) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor: (1) evidence of insurance coverage or self-insurance required by the Lease; (2) an opinion of Lessee's counsel; (2) reasonably detailed invoices for the Equipment; (3) Uniform Commercial Code (UCC) financing statements with respect to the Equipment; (4) to the extent applicable, certificates of title or certificates of origin (or

applications therefor) noting Lessor's interest thereon; (5) copies of incumbency certificates for the person(s) who will sign the Lease; (6) for a Tax-Exempt Lease only, such documents and certificates as Lessor may request relating to federal tax-exemption of interest payable under such Lease, including (without limitation) IRS Form 8038-G or 8038-GC and evidence of the adoption of a reimbursement resolution or other official action in the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty days prior to the date on which the Funding Conditions are satisfied; and (7) such other documents and information previously identified by Lessor.

6. TERMINATION UPON NON-APPROPRIATION EVENT.

6.1. For each Lease, Lessee represents and warrants that (a) it has appropriated and budgeted Legally Available Funds to make all Rent Payments required pursuant to such Lease for the remainder of the fiscal year in which the Lease Term commences; (b) it currently intends to make Rent Payments for the full Lease Term as scheduled on the applicable Payment Schedule so long as funds are appropriated for each succeeding fiscal year by its governing body; and (c) during the ten fiscal years prior to the date of the applicable Lease, its governing body has not failed (for whatever reason) to appropriate amounts sufficient to pay all obligations that were due and owing on multi-year financing agreements. Lessee reasonably believes, as of the date of this Master Lease and any Lease entered into pursuant to this Master Lease, that monies in an amount sufficient to make all Rent Payments can and will lawfully be appropriated and made available therefor.

6.2. If Lessee's governing body fails to appropriate sufficient funds in any fiscal year for Rent Payments and other amounts to be paid under a Lease in the next succeeding fiscal year, then a "Non-Appropriation Event" shall have occurred. If a Non-Appropriation Event occurs, then: (a) Lessee shall give Lessor written notice at least 10 calendar days prior to the end of the then current fiscal year of such Non-Appropriation Event and provide written evidence of such failure by Lessee's governing body; (b) on the Return Date, Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the affected Lease, at Lessee's sole expense, in accordance with Section 21 hereof; and (c) the affected Lease shall terminate on the Return Date without penalty or expense to Lessee, provided, that Lessee shall pay all Rent Payments and other amounts payable under the affected Lease for which funds shall have been appropriated, and provided further, that Lessee shall pay month-to-month rent at the rate set forth in the affected Lease for each month or part thereof that Lessee fails to return the Equipment under this Section 6.2. "Return Date" means the first business day following the last day of the quarter for which appropriations were made for the Rent Payments due under a Lease.

7. NO WARRANTY BY LESSOR.

LESSEE ACQUIRES AND LEASES THE EQUIPMENT UNDER EACH LEASE "AS IS." LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE EQUIPMENT UNDER ANY LEASE. LESSOR DOES NOT REPRESENT THE MANUFACTURER, SUPPLIER, OWNER OR DEALER, AND LESSEE SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR AS TO THE EQUIPMENT'S VALUE, DESIGN, CONDITION, USE, CAPACITY OR DURABILITY. LESSEE AGREES THAT REGARDLESS OF CAUSE, LESSOR IS NOT RESPONSIBLE FOR, AND LESSEE WILL NOT MAKE ANY CLAIM AGAINST LESSOR FOR, ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT INCURRED BY LESSEE IN CONNECTION WITH THE EQUIPMENT UNDER ANY LEASE. NEITHER THE MANUFACTURER, SUPPLIER OR DEALER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE MANUFACTURER, SUPPLIER OR DEALER IS LESSOR'S AGENT OR HAS ANY AUTHORITY TO SPEAK FOR LESSOR OR TO BIND LESSOR IN ANY WAY. For and during the Lease Term under each Lease, Lessor assigns to Lessee any manufacturer's or Supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased by Lessor in accordance with Lessee's specifications from Suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or



Supplier's product warranties or guaranties, (d) no manufacturer or Supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or Supplier or any representative of said parties shall not be binding upon Lessor.

8. TITLE; SECURITY INTEREST.

8.1. Upon Lessee's acceptance of any Equipment under a Lease, title to such Equipment shall vest in Lessee, subject to Lessor's security interest therein and all of Lessor's other rights under such Lease including, without limitation, Sections 6, 20 and 21 hereof.

8.2. As collateral security for Lessee's obligations to pay all Rent Payments and all other amounts due and payable under each Lease and to perform and observe all covenants, agreements and conditions (direct or indirect, ~~absolute or contingent, due or to become due or existing or hereafter arising~~) of Lessee under such Lease, Lessee hereby grants to Lessor a first priority, exclusive security interest in any and all of the Equipment (now existing or hereafter acquired) under each Lease, and any replacements thereof. Lessee agrees to execute and deliver to Lessor all necessary documents to evidence and perfect such security interest, including, without limitation, Uniform Commercial Code (UCC) financing statements and any amendments thereto and certificates of title or certificates of origin (or applications thereof) noting Lessor's interest thereon.

9. PERSONAL PROPERTY.

All Equipment is and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon.

10. MAINTENANCE AND OPERATION.

Lessor acknowledges that Lessee has or will enter into a maintenance and repair agreement with the Supplier or Suppliers, and Lessor will have no responsibility for maintenance or operation of any equipment. Lessee shall be solely responsible to: (a) repair and maintain all Equipment in good condition and working order, in accordance with manufacturer's instructions, and supply and install all replacement parts or other devices when required to so maintain the Equipment or when required by applicable law or regulation, which parts or devices shall automatically become part of the Equipment; (b) use and operate all Equipment solely for the purpose of performing one or more governmental functions of Lessee and in a careful manner in the normal course of its operations and only for the purposes for which it was designed in accordance with the manufacturer's warranty requirements; and (c) comply with all laws and regulations relating to the Equipment. If any Equipment is customarily covered by a maintenance agreement, Lessee will furnish Lessor with a maintenance agreement by a party reasonably satisfactory to Lessor. Lessor agrees that the Supplier of any individual Equipment is deemed an acceptable party to provide maintenance and repair services for any Equipment covered by this Lease. No maintenance or other service for any Equipment will be provided by Lessor. Lessee will not make any alterations, additions or improvements ("*Improvements*") to any Equipment without Lessor's prior written consent unless the Improvements may be readily removed without damage to the operation, value or utility of such Equipment, and any such Improvements not removed prior to the termination of the applicable Lease shall remain property of Lessee and, if the termination occurs due to non-appropriation or termination, shall be removed prior to returning the Equipment to Lessor.

11. LOCATION; INSPECTION.

Lessor acknowledges that the Equipment covered under any Lease consists solely of electric golf carts and electric utility carts, which are of a highly mobile nature. Lessor further acknowledges that Lessee's operational needs as a governmental entity, and Lessee's intended use of the Equipment, necessitate the ability of Lessee to place the Equipment

in service at any property owned or operated by Lessee. Lessor hereby consents to the use of any Equipment at any property owned or operated by Lessee. Upon reasonable notice to Lessee, Lessor may enter the Location or elsewhere during normal business hours to inspect the Equipment, provided that: (1) any person acting on behalf of Lessor who seeks to enter onto any property owned or operated by Lessee has provided proof of insurance coverage in the types and amounts acceptable to Lessee; and (2) Lessee retains the right at all times to remove any person or persons acting on behalf of Lessor from any property owned or operated by Lessee to the extent any such person acts contrary to Lessee's established health, safety, or security policies and procedures for the applicable property.

12. LIENS, SUBLEASES AND TAXES.

12.1. Lessee shall keep all Equipment free and clear of all Liens except those Liens created under each Lease. Lessor acknowledges that the nature of the Equipment and Lessee's intended use of the equipment involves short-term or temporary rental of most or all of the Equipment to customers of Lessee's public golf operations. Lessor consents to Lessee's use of any Equipment in any manner fairly contemplated by the nature of the Equipment, provided that Lessee maintains an applicable rental policy with respect to the Equipment and the Equipment is rented out only to Lessee's customers in the manner set out in that rental policy. Lessee shall not otherwise sublet or lend any Equipment or otherwise permit it to be used by anyone other than Lessee or Lessee's employees.

12.2. Lessor acknowledges that Lessee is a tax exempt governmental entity. Upon request by Lessor, Lessee will provide a valid tax exemption certificate evidencing Lessee's tax-exempt status.

13. RISK OF LOSS.

13.1. Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part from any reason whatsoever ("*Casualty Loss*"). No Casualty Loss to any Equipment shall relieve Lessee from the obligation to make any Rent Payments or to perform any other obligation under any Lease. To the extent any loss or damage to Equipment is covered for an applicable Casualty Loss by either third-party liability insurance or by first party property insurance other than Lessee's self-insurance program, proceeds of such insurance recovery will be applied to Lessee's obligations under this Section 13.

13.2. If a Casualty Loss occurs to any Equipment, Lessee shall, within a reasonable time period, notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, repair the same.

13.3. If Lessor determines that any item of Equipment has suffered a Casualty Loss beyond repair ("*Lost Equipment*"), then Lessee shall either: (a) immediately replace the Lost Equipment with similar equipment in good repair, condition and working order free and clear of any Liens (except Lessor's Liens) and deliver to Lessor a purchase order, bill of sale or other evidence of sale to Lessee covering the replacement equipment, in which event such replacement equipment shall automatically be Equipment under the applicable Lease, or (b) on the next scheduled Rent Payment due date, pay Lessor (i) all amounts owed by Lessee under the applicable Lease, including the Rent Payment due on such date, plus (ii) an amount equal to the applicable Termination Value set forth in the Payment Schedule to the applicable Lease, all provided that such amounts have been duly appropriated by Lessee's governing body. If Lessee is making such payment with respect to less than all of the Equipment under a Lease, then Lessor will provide Lessee with the pro rata amount of the Termination Value to be paid by Lessee with respect to the Lost Equipment.

13.4. To the extent of Lessee's liability under applicable law, Lessee shall bear the risk of loss for, and shall pay directly, any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorney's fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of any Lease. Lessee shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses (including

attorney's fees), damages or losses which arise directly from events occurring after any Equipment has been returned by Lessee to Lessor in accordance with the terms of the applicable Lease or which arise directly from the gross negligence or willful misconduct of Lessor.

#### 14. INSURANCE.

14.1. (a) Lessee at its sole expense shall at all times keep all Equipment insured against all risks of loss or damage from every cause whatsoever (including collision in the case of vehicles) for an amount not less than the Termination Value of the Equipment under each Lease. Lessor shall be named as loss payee with respect to all insurance covering damage to or loss of any Equipment, and the proceeds of any such insurance shall be payable to Lessor as loss payee to be applied as provided in Section 13.3. (b) The Total Amount Financed as set forth on the applicable Payment Schedule does not include the payment of any premium for any liability insurance coverage for ~~bodily injury and/or property damage caused to others and no such insurance will be purchased by Lessor.~~ (c) Lessee at its sole expense shall at all times carry public liability and property damage insurance in amounts reasonably satisfactory to Lessor protecting Lessee and Lessor from liabilities for injuries to persons and damage to property of others relating in any way to any Equipment. Lessor shall be named as additional insured with respect to all such public liability and property damage insurance, and the proceeds of any such insurance shall be payable first to Lessor as additional insured to the extent of its liability, and then to Lessee.

14.2. All insurers shall be reasonably satisfactory to Lessor. Lessee shall promptly deliver to Lessor satisfactory evidence of required insurance coverage and all renewals and replacements thereof. Each insurance policy will require that the insurer give Lessor at least 30 days' prior written notice of any cancellation of such policy and will require that Lessor's interests remain insured regardless of any act, error, misrepresentation, omission or neglect of Lessee. The insurance maintained by Lessee shall be primary without any right of contribution from insurance which may be maintained by Lessor.

14.3. If Lessee is self-insured under an actuarially sound self-insurance program that is acceptable to Lessor with respect to equipment such as the Equipment under a Lease, such self-insurance program will satisfy the requirements set out in Sections 14.1 and 14.2 of this Lease. Lessee shall maintain during the Lease Term of such Lease such actuarially sound self-insurance program and shall no more than annually provide evidence thereof in form and substance satisfactory to Lessor upon request by Lessor.

#### 15. PURCHASE OPTION.

Upon 30 days' prior written notice by Lessee to Lessor, and so long as there is no Event of Default then existing, Lessee shall have the option to purchase all, but not less than all, of the Equipment subject to a Lease on any Rent Payment due date by paying to Lessor all Rent Payments then due (including accrued interest, if any) plus the Termination Value, set forth on the Payment Schedule to the applicable Lease for such date. Upon satisfaction by Lessee of such purchase conditions, Lessor shall release its Lien on such Equipment and Lessee shall retain its title to such Equipment "AS-IS, WHERE-IS," without representation or warranty by Lessor, express or implied, except for a representation that such Equipment is free and clear of any Liens created by Lessor.

#### 16. LESSEE'S REPRESENTATIONS AND WARRANTIES.

With respect to each Lease and the Equipment subject thereto, Lessee hereby represents and warrants to Lessor that:

(a) Lessee has full power, authority and legal right to execute and deliver the Lease and to perform its obligations under the Lease, and all such actions have been duly authorized by appropriate findings

and actions of Lessee's governing body;

(b) the Lease has been duly authorized, executed and delivered by Lessee and constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Lease is authorized under, and the authorization, execution and delivery of the Lease complies with, all applicable federal, state and local laws and regulations (including, but not limited to, all open meeting, public bidding and property acquisition laws) and all applicable judgments and court orders;

(d) the execution, delivery and performance by Lessee of its obligations under the Lease will not result in a breach or violation of, nor constitute a default under, any agreement, lease or other instrument to which Lessee is a party or by which Lessee's properties may be bound or affected;

(e) there is no pending, or to the best of Lessee's knowledge threatened, litigation of any nature that may have a material adverse effect on Lessee's ability to perform its obligations under the Lease; and

(f) Lessee is duly organized and legally existing as a political subdivision, municipal corporation or similar public entity under the Constitution and laws of the State in which it is located and will do or cause to be done all things necessary to preserve and keep in full force and affect its existence as such.

17. TAX COVENANTS APPLICABLE ONLY TO TAX-EXEMPT LEASES; TAX INDEMNITY PAYMENTS.

Lessee hereby covenants and agrees that:

(a) This Master Lease is entered into by the parties based upon an expectation that the Lessor can exclude the interest component of the Rent Payments under each Tax-Exempt Lease from federal gross income. Lessee covenants and agrees with respect to each Tax-Exempt Lease that it will (i) complete and timely file an information reporting return with the Internal Revenue Service ("IRS") in accordance with Section 149(e) of the Internal Revenue Code of 1986 (the "Code"); (ii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy IRS guidelines for permitted management contracts, as the same may be amended from time to time; and (iii) comply with all provisions and regulations applicable to establishing and maintaining the excludability of the interest component of the Rent Payments under each Tax-Exempt Lease from federal gross income pursuant to Section 103 of the Code.

(b) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and approved by Lessee, which approval Lessee shall not unreasonably withhold, that Lessor may not exclude the interest component of any Rent Payment under a Tax-Exempt Lease from federal gross income because Lessee breached a covenant contained herein, then the Lease will immediately terminate and Lessee will deliver all Equipment subject to that Lease to Lessor within five business days. Notwithstanding anything in a Tax-Exempt Lease to the contrary, any payment that Lessee is required to make pursuant to this subsection (b) shall be made only from Legally Available Funds.

This Section 17 shall be inapplicable and of no force or effect with respect to any Taxable Lease.

18. ASSIGNMENT.

18.1. Lessee shall not sell, assign, transfer, pledge, hypothecate or grant any Lien on, nor otherwise dispose of,

any Lease or any Equipment or any interest in any Lease or Equipment.

18.2. Lessor may assign its rights, title and interest in and to any Lease or any Equipment, and/or may grant or assign a security interest in any Lease and its Equipment, in whole or in part, to any party at any time and from time to time with written notice to Lessee. Any such assignee or lien holder (an "Assignee") shall have all of the rights of Lessor under the applicable Lease. EXCEPT FOR THE OFFSET AND OTHER RIGHTS SET OUT IN ARTICLE VIII, SECTION 1 OF THE AUSTIN CITY CHARTER AND SECTION 2-8-3 OF THE AUSTIN CITY CODE AS THEY MAY BE SUBSEQUENTLY AMENDED, LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR. Unless otherwise agreed by Lessee in writing, any such assignment transaction shall not release Lessor from any of Lessor's obligations under the applicable Lease. An assignment or reassignment of any of Lessor's right, title or interest in a Lease or its Equipment shall be enforceable against Lessee only after Lessee receives a written notice of assignment that discloses the name and address of each such Assignee. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code with respect to Tax-Exempt Leases and Section 163(f) of the Code with respect to Taxable Leases. Lessee agrees to acknowledge in writing any such assignments if so requested.

18.3. Subject to the foregoing, each Lease inures to the benefit of and is binding upon the successors and assigns of the parties hereto.

#### 19. EVENTS OF DEFAULT.

For each Lease, "Event of Default" means the occurrence of any one or more of the following events as they may relate to such Lease: (a) Lessee fails to make any Rent Payment (or any other payment) as it becomes due in accordance with the terms of the Lease, and any such failure continues for the applicable period of time set out in the Texas Prompt Payment Act, currently codified at Chapter 2251 of the Texas Government Code; (b) Lessee fails to perform or observe any of its obligations under Section 12.1, 14 or 18.1 hereof; (c) Lessee fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under the Lease and such failure is not cured within 30 days after receipt of written notice thereof by Lessor; (d) any statement, representation or warranty made by Lessee in the Lease or in any writing delivered by Lessee pursuant thereto or in connection therewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made, and Lessee knew or should have known of the falsity thereof; or (e) Lessee applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of its assets, or a petition for relief is filed by Lessee under any federal or state bankruptcy, insolvency, moratorium or similar law.

#### 20. REMEDIES.

If any Event of Default occurs, then Lessor may, at its option, exercise any one or more of the following remedies:

(a) Lessor may require Lessee to pay (and Lessee agrees that it shall pay) all amounts then currently due under all Leases and all remaining Rent Payments due under all Leases during the fiscal year in effect when the default occurs together with accrued interest on such amounts at the respective rates provided in such Leases from the date of Lessor's demand for such payment;

(b) Lessor may require Lessee to promptly return all Equipment to Lessor in the manner set forth in Section 21 (and Lessee agrees that it shall so return the Equipment);

(c) Lessor may sell, lease or otherwise dispose of any Equipment, in whole or in part, in one or more public or



private transactions, and if Lessor so disposes of any Equipment, then Lessor shall apply the entire proceeds of such disposition as follows: *first*, to pay costs that Lessor has incurred in connection with exercising its remedies; *second*, to payment of amounts that are payable by Lessee under clause (a) above; and *then* to payment of the Termination Value set forth in the applicable Payment Schedule for the last Rent Payment due date for the fiscal year in which the related default occurs; *provided, however*, that any disposition proceeds in excess of payment of all of the foregoing amounts shall be paid promptly by Lessor to Lessee;

(d) Lessor may terminate, cancel or rescind any Lease as to any and all Equipment;

(e) Lessor may exercise any other right, remedy or privilege that may be available to Lessor under applicable law or, by appropriate court action at law or in equity, Lessor may enforce any of Lessee's obligations under any Lease; and/or

(f) Lessor may require Lessee to pay (and Lessee agrees that it shall pay, to the extent any duly appropriated funds are available for such payment) all out-of-pocket costs and expenses incurred by Lessor as a result (directly or indirectly) of the Event of Default and/or of Lessor's actions under this Section, including, without limitation, any attorney fees and expenses and any costs related to the return, safekeeping, storage, repair, reconditioning, or disposition of any Equipment.

None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to Lessor. Lessor's exercise of one or more remedies shall not preclude its exercise of any other remedy, except that Lessor may not seek any duplicative payments from Lessee to which Lessor may otherwise be entitled under multiple subsections. No delay or failure on the part of Lessor to exercise any remedy under any Lease shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise of any remedy preclude any other exercise thereof or the exercise of any other remedy.

## 21. RETURN OF EQUIPMENT.

If Lessor is entitled under the provisions of any Lease, including any valid termination thereof pursuant to Section 6 or 20 hereof, to obtain possession of any Equipment or if Lessee is obligated at any time to return any Equipment, then (a) title to the Equipment shall vest in Lessor immediately upon Lessor's valid and properly-given notice thereof to Lessee, and (b) Lessee shall, at its sole expense and risk, immediately de-install, disassemble, pack, crate, insure and return the Equipment to Lessor (all in accordance with applicable industry standards) at any location in the State of Texas selected by Lessor. Such Equipment shall be in the same condition as when received by Lessee (reasonable wear, tear and depreciation resulting from normal and proper use excepted), shall be in good operating order and maintenance as required by the applicable Lease, shall be free and clear of any Liens (except Lessor's Lien) and shall comply with all applicable laws and regulations. Until Equipment is returned as required above, all terms of the applicable Lease shall remain in full force and effect including, without limitation, obligations to pay Rent Payments and to insure the Equipment. Lessee agrees to execute and deliver to Lessor all documents reasonably requested by Lessor to evidence the transfer of legal and beneficial title to such Equipment to Lessor and to evidence the termination of Lessee's interest in such Equipment.

## 22. LAW GOVERNING.

(a) Each Lease shall be governed by the laws of the state in which Lessee is located (the "State").

## 23. NOTICES.

All notices to be given under any Lease shall be made in writing and either personally delivered or mailed by certified mail to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notices shall be deemed to have been received five (5) days subsequent to mailing if sent by regular or certified mail, or on the next business day if sent by overnight courier, or on the day of delivery if delivered personally.

24. FINANCIAL INFORMATION; INDEMNITY; POWER OF ATTORNEY.

24.1. Within 30 days after their completion for each fiscal year of Lessee during any Lease Term, Lessee will deliver to Lessor upon Lessor's request the publicly available Comprehensive Annual Financial Report of Lessee.

25. ANTI-MONEY LAUNDERING/INTERNATIONAL TRADE LAW COMPLIANCE.

Lessee represents and warrants to Lessor, as of the date of this Master Lease, the date of each advance of proceeds pursuant to this Master Lease, the date of any renewal, extension or modification of this Master Lease or any Lease, and at all times until this Master Lease and each Lease has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (b) the proceeds of any Lease will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (c) the funds used to repay any Lease are not derived from any unlawful activity; and (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by any Anti-Terrorism Laws. Lessee covenants and agrees that it shall immediately notify Lessor in writing upon the occurrence of a Reportable Compliance Event.

As used herein: "Anti-Terrorism Laws" means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; "Compliance Authority" means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; "Covered Entity" means Lessee; "Reportable Compliance Event" means that any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, relating to or in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law specifically related to this Master Lease, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; "Sanctioned Country" means a country subject to a sanctions program maintained by any Compliance Authority; and "Sanctioned Person" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

26. USA PATRIOT ACT NOTICE.

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each lessee that opens an account.

What this means: when Lessee opens an account, Lessor will ask for the business name, business address, taxpayer identifying number and other information that will allow Lessor to identify Lessee, such as organizational documents. For some businesses and organizations, Lessor may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

27. SECTION HEADINGS.

All section headings contained herein or in any Schedule are for convenience of reference only and do not define or limit the scope of any provision of any Lease.

28. EXECUTION IN COUNTERPARTS.

~~This Master Lease and each Lease may be executed in several counterparts, each of which shall be an original,~~ but all of which shall constitute one and the same instrument; *provided, however*, that only Counterpart No. 1 of each Lease (including the terms and conditions of this Master Lease incorporated therein by reference) shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

29. ENTIRE AGREEMENT; WRITTEN AMENDMENTS.

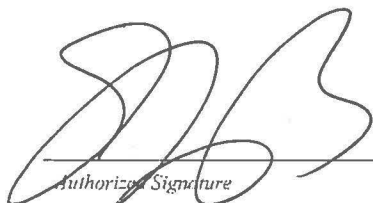
This Master Lease and each Lease and other documents or instruments executed by Lessee and Lessor in connection therewith constitute the entire agreement between the parties with respect to the lease of the Equipment covered thereby, and such Lease shall not be modified, amended, altered or changed except with the written consent of Lessee and Lessor. Any provision of any Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

30. IMPORTANT INFORMATION ABOUT PHONE CALLS.

By providing telephone number(s) to Lessor, now or at any later time, Lessee authorizes Lessor and its affiliates and designees to contact Lessee regarding Lessee account(s) with Lessor or its affiliates, whether such accounts are Lessee individual accounts or business accounts for which Lessee is a contact, at such numbers using any means, including but not limited to placing calls using an automated dialing system to cell, VoIP or other wireless phone number, or leaving prerecorded messages or sending text messages, even if charges may be incurred for the calls or text messages. Lessee consents that any phone call with Lessor may be monitored or recorded by Lessor.

City of Austin,  
as Lessee

PNC Equipment Finance, LLC,  
as Lessor



Authorized Signature

Sandy Brandt

Printed Name

Interim Procurement Supervisor

Title



Authorized Signature

Michelle Gibbs  
Vice President

Printed Name

Title

Lease Schedule A (Tax-Exempt)

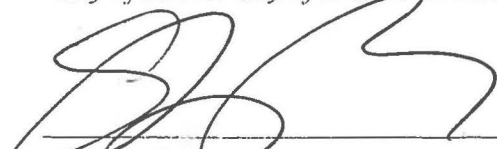
Dated as of December 22, 2017

This Lease Schedule No. 209994000 (this "*Schedule*") relates to the Master Equipment Lease-Purchase Agreement referenced below and, together with the terms and conditions of the Master Lease incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Master Lease. All terms and conditions of the Master Lease are incorporated herein by reference.


Master Equipment Lease-Purchase Agreement dated December 22, 2017.

1. *Equipment Description.* As used in the Lease, "*Equipment*" means all of the property described in the Payment Schedule attached to this Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.
2. *Rent Payments; Lease Term.* The Rent Payments to be paid by Lessee to Lessor, the Commencement Date of this Lease and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Schedule.
3. *Essential Use; Current Intent of Lessee.* Lessee represents that (a) the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; to continue this Lease; and to make Rent Payments so long as funds are appropriated by its governing body for the succeeding fiscal year.
4. *ACCEPTANCE OF EQUIPMENT.* AS BETWEEN LESSEE AND LESSOR, LESSEE AGREES THAT (a) LESSEE HAS RECEIVED AND INSPECTED ALL EQUIPMENT; (b) ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS, CONTRACTS AND SPECIFICATIONS; (c) LESSEE ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE "AS-IS, WHERE IS"; AND (d) LESSEE WAIVES ANY RIGHT TO REVOKE SUCH ACCEPTANCE (BUT MAINTAINS ANY RIGHTS IT MAY HAVE AGAINST THE SELLER OF THE EQUIPMENT).
5. *Re-Affirmation of the Master Lease Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Master Lease (particularly Sections 6.1 and 16 thereof) are true and correct as though made on the date of execution of this Schedule.

City of Austin City of Austin as Lessee

  
Authorized Signature  
Sandy Brandt

PNC Equipment Finance, LLC. as Lessor

  
Authorized Signature  
**Michelle Gibbs**  
Vice President

Printed Name

Interim Procurement Supervisor

Title

Printed Name

Title

Counterpart No. of manually executed and serially numbered counterparts. To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

---



Lease Schedule A (Tax-Exempt)

Dated as of December 22, 2017

This Lease Schedule No. 210096000 (this "Schedule") relates to the Master Equipment Lease-Purchase Agreement referenced below and, together with the terms and conditions of the Master Lease incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Master Lease. All terms and conditions of the Master Lease are incorporated herein by reference.

Master Equipment Lease-Purchase Agreement dated December 22, 2017.

1. Equipment Description As used in the Lease, "Equipment" means all of the property described in the Payment Schedule attached to this Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.
2. Rent Payments; Lease Term. The Rent Payments to be paid by Lessee to Lessor, the Commencement Date of this Lease and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Schedule.
3. Essential Use; Current Intent of Lessee. Lessee represents that (a) the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; to continue this Lease; and to make Rent Payments so long as funds are appropriated by its governing body for the succeeding fiscal year.
4. ACCEPTANCE OF EQUIPMENT. AS BETWEEN LESSEE AND LESSOR, LESSEE AGREES THAT (a) LESSEE HAS RECEIVED AND INSPECTED ALL EQUIPMENT; (b) ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS, CONTRACTS AND SPECIFICATIONS; AND (c) LESSEE ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE "AS-IS, WHERE IS.
5. Re-Affirmation of the Master Lease Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Master Lease (particularly Sections 6.1 and 16 thereof) are true and correct as though made on the date of execution of this Schedule.

City of Austin City of Austin, as Lessee

PNC Equipment Finance, LLC, as Lessor



Authorized Signature

Sandy Brandt

Printed Name

Interim Procurement Supervisor



Authorized Signature

Michelle Gibbs

Printed Name

Vice President

*Title*

*Title*

Counterpart No.    of    manually executed and serially numbered counterparts. To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

---

# PAYMENT SCHEDULE A-1

Attached to and made a part of that certain Lease Schedule No. 209994000 dated as of December 22, 2017 by and between PNC Equipment Finance, LLC, as Lessor, and **City of Austin**, as Lessee.

Commencement Date: \_\_\_\_\_

EQUIPMENT LOCATION

& DESCRIPTION: Travis

County

Quantity Description Serial No.

229 2018 New E-Z-GO TXT48v E Golf Cars

Together with all attachments, tooling, accessories, appurtenances, and additions thereto.

## 1. LEASE PAYMENT SCHEDULE:

(a) Total Amount Financed: \$590,133.00

(b) Payment Schedule: Lease Term is for 48 months with 16 (Sixteen) quarterly payments due in January, April, July and October of each year.

Payment Number	Date	Payment	Interest	Principal	Termination Amount*
1		\$39,218.54	\$1,560.48	\$37,658.06	\$569,049.19
2		\$39,218.54	\$1,468.64	\$37,749.90	\$533,180.22
3		\$39,218.54	\$1,376.06	\$37,842.48	\$497,025.95
4		\$39,218.54	\$1,282.75	\$37,935.79	\$460,584.12
5		\$39,218.54	\$1,188.70	\$38,029.84	\$423,852.44
6		\$39,218.54	\$1,093.90	\$38,124.64	\$386,828.59
7		\$39,218.54	\$998.35	\$38,220.19	\$349,510.27
8		\$39,218.54	\$902.04	\$38,316.50	\$311,895.13
9		\$39,218.54	\$804.96	\$38,413.58	\$273,980.80
10		\$39,218.54	\$707.11	\$38,511.43	\$235,764.91
11		\$39,218.54	\$608.48	\$38,610.06	\$197,245.05
12		\$39,218.54	\$509.06	\$38,709.48	\$158,418.81
13		\$39,218.54	\$408.86	\$38,809.68	\$119,283.75
14		\$39,218.54	\$307.85	\$38,910.69	\$79,837.41
15		\$39,218.54	\$206.05	\$39,012.49	\$40,077.33
16		\$39,218.54	\$103.43	\$39,115.11	\$1.00

City of Austin, as Lessee



Authorized Signature

Sandy Brandt

Printed Name

Interim Procurement Supervisor

Title

PNC Equipment Finance, LLC, as Lessor



Authorized Signature

Michelle Gibbs  
Vice President

Printed Name

Title

## PAYMENT SCHEDULE A-1

Attached to and made a part of that certain Lease Schedule No. 210096000 dated as of December 22, 2017 by and between PNC Equipment Finance, LLC, as Lessor, and **City of Austin**, as Lessee.

Commencement Date: \_\_\_\_\_

EQUIPMENT LOCATION  
& DESCRIPTION: Travis  
County

Quantity	Description	Serial No.
80	2018 New E-Z-GO TXT48v E Golf Cars	

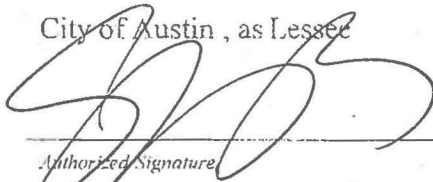
Together with all attachments, tooling, accessories, appurtenances and additions thereto

1. LEASE PAYMENT SCHEDULE:

- (a) Total Amount Financed: \$335,280.00  
(b) Payment Schedule: Lease Term is for 40 months with 14 (Fourteen) quarterly payments due in January, April, July and October of each year.

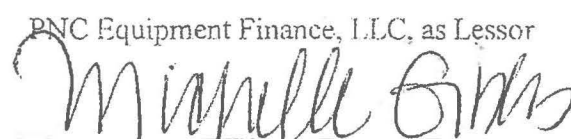
Payment Number	Date	Payment	Interest	Principal	Termination*
1		\$25,269.00	\$887.34	\$24,381.66	\$320,225.29
2		\$25,269.00	\$827.18	\$24,441.82	\$296,747.46
3		\$25,269.00	\$766.53	\$24,502.47	\$273,082.73
4		\$25,269.00	\$705.40	\$24,563.60	\$249,229.59
5		\$25,269.00	\$643.79	\$24,625.21	\$225,186.58
6		\$25,269.00	\$581.68	\$24,687.32	\$200,952.17
7		\$25,269.00	\$519.08	\$24,749.92	\$176,524.82
8		\$25,269.00	\$455.98	\$24,813.02	\$151,903.02
9		\$25,269.00	\$392.38	\$24,876.62	\$127,085.21
10		\$25,269.00	\$328.28	\$24,940.72	\$102,069.84
11		\$25,269.00	\$263.66	\$25,005.34	\$76,855.32
12		\$25,269.00	\$198.53	\$25,070.47	\$51,440.08
13		\$25,269.00	\$132.88	\$25,136.12	\$25,822.51
14		\$25,269.00	\$66.70	\$25,202.30	\$1.00

City of Austin, as Lessee

  
Authorized Signature  
Sandy Brandt  
Printed Name

Interim Procurement Supervisor  
Title

PNC Equipment Finance, LLC, as Lessor

  
Authorized Signature

Michelle Gibbs  
Printed Name  
Vice President

Title



# City of Austin

---

## Law Department

City Hall, 301 West 2nd Street, P.O. Box 1088  
Austin, Texas 78767-1088

December 22, 2017

PNC Equipment Finance, LLC  
995 Dalton Avenue  
Cincinnati, Ohio 45203

RE: Master Equipment Lease-Purchase Agreement dated December 22, 2017 and Lease Schedules thereto

Ladies and Gentlemen:

As an Assistant City Attorney for the City of Austin ("Lessee"), I have examined the Master Equipment Lease-Purchase Agreement duly executed by Lessee and dated December 22, 2017 (the "*Master Lease*"), which has been incorporated by reference into Lease Schedule No. 209994000 dated December 22, 2017 (the "*Original Lease Schedule*"), each between Lessee and PNC Equipment Finance, LLC, as lessor ("*Lessor*"), the *Schedule A-1* attached to the Original Lease Schedule (the "*Original Payment Schedule*") and the proceedings taken by the governing body of Lessee to authorize on behalf of Lessee the execution and delivery of the Master Lease, the Original Lease Schedule, the Original Payment Schedule and all additional lease schedules and related payment schedules to be entered into pursuant to the Master Lease (each of which is herein referred to as an "*Additional Lease Schedule*") and to be executed and delivered by the same authorized officers on behalf of Lessee in substantially the same manner and in substantially the same form as the Original Lease Schedule. The Original Lease Schedule, which incorporates by reference the terms and conditions of the Master Lease, and the related Original Payment Schedule are herein collectively referred to as the "*Lease*." Any Additional Lease Schedule, which incorporates by reference the terms and conditions of the Master Lease, and the related payment schedule are herein collectively referred to as an "*Additional Lease*."

Based upon the foregoing examination, I am of the opinion that:

1. Lessee is duly organized and legally existing as a political subdivision, municipal corporation or similar public entity under the Constitution and laws of the State of Texas with full power and authority to enter into, and perform its obligations under, the Lease and each Additional Lease.
2. The Lease has been duly authorized and has been duly executed by Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Lease constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with their respective terms, except to the extent limited by State



and federal law affecting creditor's remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights.

3. Lessee has complied with any applicable property acquisition laws and public bidding requirements in connection with the Lease and the transactions contemplated thereby.
4. To the best of my knowledge, there is no litigation or proceeding pending or threatened before any court, administrative agency or governmental body that challenges: the organization or existence of Lessee; the authority of its officers to enter into the Lease; the proper authorization, approval and execution of the Lease, or any documents relating thereto; the appropriation of monies to make payments under the Lease; or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.
5. The authorization of Lessee's governing body to execute and deliver the Master Lease, and the Original Lease Schedule was adopted at a meeting that was held in compliance with the Texas Open Meetings Act.
6. The entering into and performance of the Lease and each Additional Lease do not violate any judgment, order, law or regulation applicable to Lessee.
7. The correct legal name of Lessee for purposes of the Uniform Commercial Code in effect in the State of Texas.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris J. Weema", is written over a faint circular seal of the City of Austin, Texas. The seal features a shield with a red and white design and the text "CITY OF AUSTIN TEXAS" and "FOUNDED 1839".

Christopher J. Weema  
Assistant City Attorney



**CITY OF AUSTIN, TEXAS**  
**Purchasing Office**  
**REQUEST FOR PROPOSAL (RFP)**  
**OFFER SHEET**

**SOLICITATION NO:** RFP 8600 SMB0105

**DATE ISSUED:** August 14, 2017

**REQUISITION NO.:** RQM 8600 17052200539

**COMMODITY CODE:** 97538

**FOR CONTRACTUAL AND TECHNICAL  
ISSUES CONTACT THE FOLLOWING  
AUTHORIZED CONTACT PERSON:**

Sandy Brandt  
Procurement Specialist IV

**Phone:** (512) 974-1783

**E-Mail:** Sandy.Brandt@austintexas.gov

Liz Lock

Procurement Specialist II

**Phone:** (512) 974-2034

**E-Mail:** Liz.Lock@austintexas.gov

**COMMODITY/SERVICE DESCRIPTION:** Electric Golf Carts and  
Utility Golf Carts, Municipal Lease

**PRE-PROPOSAL CONFERENCE TIME AND DATE:** Tuesday,  
August 22, 2017 at 9:30am local time

**LOCATION:** Jimmy Clay-Roy Kizer Golf Complex  
5400 Jimmy Clay Dr.  
Austin, TX 78749

**PROPOSAL DUE PRIOR TO:** 2:00pm local time on August 31,  
2017

**PROPOSAL OPENING TIME AND DATE:** 3:00pm local time on  
August 31, 2017

**LOCATION:** MUNICIPAL BUILDING, 124 W 8<sup>th</sup> STREET  
RM 308, AUSTIN, TEXAS 78701

**LIVE SOLICITATION OPENING ONLINE:** For RFP's, only the  
names of respondents will be read aloud

For information on how to attend the Solicitation Closing online,  
please select this link:

<http://www.austintexas.gov/department/bid-opening-webinars>

**When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired,  
as shown below:**

<b>Address for US Mail (Only)</b>	<b>Address for FedEx, UPS, Hand Delivery or Courier Service</b>
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # RFP 8600 SMB0105	Purchasing Office-Response Enclosed for Solicitation # RFP 8600 SMB0105
P.O. Box 1088	124 W 8 <sup>th</sup> Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

**NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.**

**All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.**

**SUBMIT 1 ORIGINAL AND 1 ELECTRONIC COPY OF YOUR RESPONSE**  
**\*\*\*SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT\*\*\***

**This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.**

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	3
0500	SCOPE OF WORK	5
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	3
0600A	COST PROPOSAL SHEET	1
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0700	REFERENCE SHEET – Complete and return if required	2
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1

**\* Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the \* Sections are available on the Internet at the following online address:**

[http://www.austintexas.gov/financeonline/vendor\\_connection/index.cfm#STANDARDBIDDOCUMENTS](http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS)

**If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8<sup>th</sup> Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.**

#### **INTERESTED PARTIES DISCLOSURE**

**In addition, Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 “Certificate of Interested Parties” that is signed and notarized for a contract award requiring council authorization. The “Certificate of Interested Parties” form must be completed on the Texas Ethics Commission website, printed, signed and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution.**

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

**The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.**

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Federal Tax ID No. \_\_\_\_\_

Printed Name of Officer or Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature of Officer or Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**\* Proposal response must be submitted with this signed Offer sheet to be considered for award**

**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office no later than five business days prior to the Solicitation Due Date.

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
  - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
  - (1) The policy shall contain the following provisions:
    - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
    - (b) Contractor/Subcontracted Work.
    - (c) Products/Completed Operations Liability for the duration of the warranty period.
    - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
  - (2) The policy shall also include these endorsements in favor of the City of Austin:



**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
      - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
      - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
    - iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
      - (1) The policy shall include these endorsements in favor of the City of Austin:
        - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
        - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
        - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
  - C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
3. **TERM OF CONTRACT:**
- A. The Contract shall be in effect for 48 months.
  - B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
  - C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
  - D. Prices are firm and fixed for the first 12 months of the Contract.
4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
5. **DELIVERY REQUIREMENTS:**
- A. Delivery is to be made according to the Scope of Work. All orders must be shipped complete unless arrangements for partial shipments are made in advance.
  - B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
  - C. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.
  - D. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 51 in Section 0300).

**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

6. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Parks and Recreation Department
Attn:	Accounts Payable
Address	200 S. Lamar Blvd.
City, State Zip Code	Austin, TX 78704

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

7. **SAMPLES – REPRESENTATIVE:**

- A. The Offeror shall submit a representative sample of the goods to be provided per the Scope of Work. This sample shall be provided within 10 working days after request by the City.
- B. The Offeror must also submit with the sample a statement from the manufacturer that guarantees the goods will be manufactured in accordance with the City specifications and that delivery requirements will be met. Failure to do so may subject the Offer to disqualification from consideration for award.
- C. All products provided to the City under this solicitation will be evaluated or tested and must meet all requirements of the specification, regardless of whether or not all requirements are to be evaluated or tested.
- D. Samples will be provided at no cost to the City. Failure to supply samples when requested shall subject the Offer to disqualification from consideration for award.

\*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

**CITY OF AUSTIN PURCHASING OFFICE  
SECTION 0500: SCOPE OF WORK  
RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

**1.0 PURPOSE**

This City of Austin (City) seeks to enter into a four-year municipal lease agreement for approximately 302 golf carts and 7 utility golf carts. The City will make payments in equal installments for the entire term of the lease, and the Contractor shall include in the agreement a \$1 buy-out at the end of the lease term. The Contractor shall purchase the City's existing fleet of golf carts as trade-in and shall also provide service and repair on an as needed basis throughout the term of the Contract. Golf carts and utility golf carts (Fleet) will be utilized at City golf facilities: Jimmy Clay/Roy Kizer Golf Complex, Grey Rock Golf Club, Hancock Golf Course, and Morris Williams Golf Course.

**2.0 CONTRACTOR MINIMUM QUALIFICATIONS**

2.1 The Contractor shall have been in business for a minimum of ten years.

**3.0 CONTRACTOR RESPONSIBILITIES**

The Contractor shall purchase the existing two hundred and ten (210) golf carts currently owned by the City for no less than \$231,000. The City's existing golf cart fleet is 2012 EZGO Model TXT.

3.1 The Contractor shall comply with all Federal and State of Texas standards, regulations, and laws concerning this type of equipment, effective on the date of manufacture, including safety, noise, and emission control standards as applies to both private industry and governmental agencies. This also includes compliance with applicable OSHA safety requirements.

3.2 The Contractor shall name a Contract Manager upon execution of Contract and shall provide the City with Contract Manager's name, address, phone and email.

3.3 The Contractor shall provide the following manuals for Fleet upon execution of Contract:

3.3.1 Operation and Maintenance Manual

3.3.2 Replacement Parts Manual

3.4 At the City's request, the Contractor shall lease additional golf carts at the same price proposed in the Cost Proposal. Additional golf carts shall be of the same make and model and include the same features of the Fleet. The City does not anticipate a need for greater than 72 additional golf carts.

**3.5 Delivery**

3.5.1 The Contractor shall deliver the Fleet **completely assembled**, adjusted, serviced, and ready for immediate use.

3.5.2 The Contractor shall deliver the Fleet according to the schedule below or as otherwise requested by the City.

3.5.2.1 140 golf carts and 4 utility golf carts with all additional components in November/December 2017 to Jimmy Clay/Roy Kizer Golf Complex. Contractor shall also deliver 20 **uninstalled** windshields with golf cart/utility golf cart delivery.

3.5.2.2 70 golf carts and 2 utility golf carts with all additional components in November/December 2017 to Morris Williams Golf Course

3.5.2.3 12 golf carts and 1 utility golf cart with all additional components in November/December 2017 to Hancock Golf Course

3.5.2.4 80 golf carts with all additional components including **installed** windshields in June 2018 to Grey Rock Golf Club

**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0500: SCOPE OF WORK**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

**3.6 Maintenance and Repair**

- 3.6.1 The Contractor shall make repairs or provide services on or off City property, at Contractor's discretion, and shall begin repair and/or service within 48 hours of notification by Contract Manager. Notification will be made (7) seven days per week between the hours of 7:00 a.m. and 5:00 p.m. CST except Christmas Day, Thanksgiving Day, New Year's Day, Easter, Memorial Day and Labor Day.
- 3.6.2 The Contractor shall carry a completed inspection sheet, which the City will sign, confirming that the required work has been completed in a satisfactory manner.
- 3.6.3 The Contractor shall have a repair facility within a 100-mile radius of the Texas State Capital.
- 3.6.4 The Contractor shall not invoice the City for repair-related travel expenses.
- 3.6.5 The Contractor shall provide a substitute or comparable golf cart if the fully repaired or serviced cart cannot be returned to service within 48 hours of notification by the City. If the Contractor is unable to comply with the requirements for cart repair or substitution, the Contractor shall be required to store substitute cart(s) on City property. Use of this cart(s) will be limited to times when the Contractor's performance does not comply with the requirements of these specifications.

**3.7 Faulty Golf Carts**

- 3.7.1 The Contractor shall replace cart(s) within 48 hours that fail to perform due to repeated mechanical problems during the warranty period, at no additional cost to the City. No more than three (3) repairs for the same malfunction.
- 3.7.2 During the warranty period, if any cart fails to provide the quality or operational performance required or has had three (3) repairs and/or customer complaints for the same malfunction, the Contractor shall replace the cart within 48 hours of notification by the City, at no additional cost to the City.

**3.8 Training**

The Contractor shall provide orientation/training on the operation and maintenance of golf carts, battery chargers and other related components at no additional cost to the City. The Contractor shall contact the City to schedule training upon execution of Contract.

**3.9 Warranty**

- 3.9.1 The Contractor shall provide a warranty that covers repairs resulting from normal wear and breakage, including parts, labor, tools, and materials. The warranty shall become effective upon the date of delivery.
  - 3.9.1.1 The City will be responsible for damage by an outside agency or improper City service.
- 3.9.2 The Contractor shall warrant Fleet to be free of defects in materials and workmanship for a minimum of three (3) years from the time of delivery or 21,500 amp-hours, whichever comes first. Additionally, the following items shall be warranted by the Contractor to operate without

**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0500: SCOPE OF WORK**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

interruption during the warranty period, provided that the City performs routine maintenance according to the operator's manual.

- 3.9.2.1 Defective Wheels (Tires and Rims) – one (1) year
- 3.9.2.2 Charger – three (3) years except fuses and diodes
- 3.9.2.3 Batteries – three (3) years
- 3.9.2.4 Brake Shoe – three (3) years

- 3.9.3 Each item, including components and installed accessories on the Fleet, shall be guaranteed by the Contractor to be free of defective parts and workmanship. Warranty shall cover parts and labor including shipping costs and adjustments. If warranty work cannot be accomplished on City property, the Contractor shall be responsible for all transportation and associated costs. The warranty shall begin at the time the Fleet is delivered to the City.
- 3.9.4 Warranty repairs may be accomplished on City property, if space is available and determined by the City.
- 3.9.5 The warranty will not apply in cases of driver or City staff abuse or negligence. Any dispute shall be resolved as per Section 48, Dispute Resolution of Section 0300 - Standard Purchase Terms and Conditions.

#### **4.0 FLEET MINIMUM REQUIREMENTS**

The Contractor shall ensure that the Fleet meets the following minimum requirements:

- 4.1 Manufacturer of the Fleet has been regularly engaged in the production of electric golf carts, as stated in these specifications, no less than the previous ten (10) years.
- 4.2 Latest (current) model in production at the time of delivery, standard production model offered to the golf industry, and of new manufacture, including all parts, components, and accessory items.
- 4.3 Easy to drive and maneuver.
- 4.4 Includes all components necessary to give maximum performance, service life, and safety.
- 4.5 Motor – Fleet shall be equipped with a minimum of a 48 volt, D.C. series electrical motor capable of supplying a minimum of two (2) horsepower.
- 4.6 Transaxle – Fleet shall be equipped with a differential with helical gears and include a manual or keyed forward, reverse and neutral switch.
- 4.7 Dimensions – Fleet shall conform to the following ranges: overall length shall range from ninety-one (91) to ninety-five (95) inches; overall width shall range from forty-six (46) to forty-eight (48) inches; wheelbase shall range from sixty-three (63) to sixty-six (66) inches; and overall height (including canopy) shall range from sixty-seven (67) to seventy-one (71) inches.
- 4.8 Suspension – Fleet shall be equipped with coil or leaf springs and hydraulic shock absorbers on all four (4) wheels.
- 4.9 Seat – Fleet shall be equipped with a cushioned, bench type seat with backrest for transporting a driver and passenger and include handgrip and hip restraints.
- 4.10 Chassis - Fleet shall be equipped with a welded, tubular steel chassis with undercoating or an all aircraft type aluminum chassis.
- 4.11 Body – Fleet shall be equipped with a body composed of polymer type construction, resistant to denting, cracking, and fading. Body shall resist deterioration due to exposure to ultra violet light.

**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0500: SCOPE OF WORK**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

Body shall be lightweight and corrosion resistant. Black rear quarter panel top scruff guards shall be included.

- 4.12 Color - Body shall be color impregnated throughout entire cart to avoid scratch damage. The City reserves the right to select up to four (4) separate colors at no additional charge.
- 4.13 Decals – Contrasting color to the golf cart and three (3) inches (size of numbers). Sequentially numbered decals shall be placed on the front and each side of the golf cart. City reserves the right to designate numbering system.
- 4.14 Wheels – Fleet shall be equipped with four (4) manufacturer's standard tires with premium tread. Four (4) ply tires shall be approximately 18x8.5x8 in size.
- 4.15 Instruments - Fleet shall be equipped with a reverse warning indicator.
- 4.16 Electrical System - Fleet shall be equipped with a minimum 48 volt system with six (6) each, 8-volt batteries. Batteries shall be manufactured by Trojan Battery Company. Battery Charger Specifically designed for the golf carts that are bid will be supplied with each cart. NOTE: Golf carts shall provide thirty-six (36) hole operation on a single charge and utility golf carts shall provide a minimum seven (7) hours of constant operation on a single charge.
- 4.17 Golf carts must be equipped with the manufacture standard single point battery fill system.
- 4.18 Ground Speed – Golf carts shall deliver the following ground speed: forward = 12 to 15 miles per hour; reverse = ½ forward speed. Utility golf carts shall deliver the following ground speed: forward = 15 to 25 miles per hour; reverse = ½ forward speed. A solid state, continuously variable, speed controller will provide at least 4 different speeds in forward.
- 4.19 Steering - Fleet shall be equipped with a self-adjusting, automotive rack and pinion or worm gear type steering.
- 4.20 Top - Fleet shall be equipped with an unbreakable white colored sun canopy. A message holder for posting names shall be attached to the front of each top.
- 4.21 Brakes - Fleet shall be equipped with dual rear wheel, mechanical drum brakes with self-adjusting, non-asbestos lining. A self-compensating hill/parking brake with automatic release shall be included.
- 4.22 Load Capacity – Fleet shall transport a minimum of 800 pounds including operator, passenger, accessories and cargo.
- 4.23 Programming Units – If the fleet has a programmable motor and electric system, the Contractor shall provide five (5) handheld programming units for use with the fleet.
- 4.24 Utility Cart Items – Utility carts shall be equipped with front headlights and rear tail lights supplied and installed by Contractor.
- 4.25 Additional Equipment - Fleet shall be equipped with the following at no additional cost to the City:
  - 4.25.1 a single or double sweater basket,
  - 4.25.2 bagwell protectors
  - 4.25.3 four (4) cup console with drink, tee and ball holders
  - 4.25.4 pencil and scorecard holder
  - 4.25.5 keys for entire Fleet (two per cart)
  - 4.25.6 two sand bottle brackets
  - 4.25.7 two sand bottles
  - 4.25.8 message holder



**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0500: SCOPE OF WORK**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

- 4.26 Tow Bars – golf carts shall be equipped with a towing system so that carts may be linked together and towed in a line of no less than three (3) carts. The towing system shall be permanent to the carts. Removable tow bars will not be acceptable. The towing system may be either a company standard system or an “after market” system.
- 4.27 Windshields – Contractor shall provide to the City a total of one hundred clear acrylic, shatter and crack resistant bi-fold windshields. Contractor shall ensure that windshields are installed on golf carts delivered to Grey Rock Golf Course. Contractor shall deliver the remainder of windshields uninstalled to Jimmy Clay/Roy Kizer Golf Complex.

**5.0 CITY RESPONSIBILITIES**

- 5.1 City staff will perform routine maintenance according to the operator’s manual for repairing tire punctures and/or replacement, battery care, single battery replacement (warranted battery to be supplied by Contractor), overall cleaning, preventative maintenance, and securing of loose nuts and bolts.
- 5.2 The City will be responsible for the purchase and installation of common wear and tear items not covered under warranty or beyond the warranty period. The City will be responsible for damage by an outside agency or improper City service.

**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0600: PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

**1. PROPOSAL FORMAT**

Submit 1 original and 1 electronic copy of your Proposal on a flash drive. Submit the original on 8.5 x 11 inch paper, bound or in a 3-ring binder. The original proposal must be clearly labeled as “original” and must include the original signature of the person authorized to sign on behalf of the Proposer.

Organize your Proposal in the information sequence described below. Use tabs to divide each part of your Proposal and include a Table of Contents with page numbers. Proposers should provide all details in the Proposal described below and any additional information you deem necessary to evaluate your Proposal.

**A. City of Austin Purchasing Documents:**

Complete and submit the following documents:

- 1) Signed Offer Sheet (pages 1-3)
- 2) Signed Addendums (all pages)
- 3) Completed and Signed Section 0605 – Local Business Presence Identification Form
- 4) Completed Section 0700 – Reference Sheet
- 5) Completed and Signed Section 0800 – Non-Discrimination and Non-Retaliation Certification
- 6) Completed and Signed Section 0835 – Non-Resident Bidder Provisions

**B. Authorized Negotiator:** Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

**C. Exceptions:** Identify any exceptions you are requesting to the terms, conditions, and services described in this Solicitation. Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal.

**D. Company Information:**

Provide the following information:

- 1) Full name and address of your company; identify parent company if you are a subsidiary. Indicate whether you operate as a partnership, corporation, or individual. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Include the State(s) in which incorporated or licensed to operate and how long your company has been in business.
- 2) Using Section 0700 Reference sheet, provide three references. All client reference information must be supported and verified. Reference contacts must be aware that they are being used and agreeable to follow-up by the City.

**E. Proposed Solution (20 points)**

**Golf Carts and Golf Utility Carts**

Provide a detailed description of the proposed golf carts and utility golf carts, including but not limited to:

- 1) Manufacturers' descriptive literature of golf carts and utility golf carts.
- 2) Information on performance, drivability, maneuverability, turning radius or any other relevant details.
- 3) Details on the proposed battery filling system.
- 4) Picture of the golf carts and utility golf carts from various sides, brochures, or drawings

**Training**

Provide a detailed description of the proposed training on equipment operation, maintenance, etc.

**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0600: PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

**Warranty**

Provide a detailed description of the proposed warranty, including but not limited to:

- 1) Breakdown and description of specific parts warranted and the period of time covered under the warranty.
- 2) Details of warranty exclusions, if any.

**F. Proposed Lease Terms (20 points)**

Provide a detailed description of proposed lease terms, including but not limited to:

- 1) Sample lease agreement.
- 2) Detailed information on the proposed interest rate.
- 3) Payment schedule that shows how each payment breaks down the amount of principal and amount of interest.
- 4) Special incentives, such as early repayment discount.

**G. Response Solution (15 points)**

- 1) Refer to Section 0500 Scope of Work for the City's desired delivery. State number of days lead time for delivery after contract execution.
- 2) Describe response time to service requests and turnaround time on repairs.

**H. Cost Proposal (35 points):** Using the Cost Proposal Sheet, provide your proposed prices for golf carts, utility golf carts, windshields, and buyback of City's existing golf carts.

**2. Proposal Acceptance Period:** All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal

**3. Proprietary Information:** All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

**4. PROPOSAL PREPARATION COSTS:**

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

**5. EVALUATION FACTORS AND AWARD**

**A. Competitive Selection:** This procurement will comply with applicable City Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph B below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the Best Offeror. Award of a Contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

**B. Evaluation Factors:**

- i. 100 points.

- (1) Proposed Solution – 20 points

**CITY OF AUSTIN PURCHASING OFFICE**  
**SECTION 0600: PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS**  
**RFP 8600 SMB0105: ELECTRIC GOLF CARTS AND UTILITY GOLF CARTS, MUNICIPAL LEASE**

(2) Proposed Lease Terms – 20 points

(3) Response Solution – 15 points

(4) Cost Proposal – 35 points

Lowest proposed price will receive the maximum points, and percentage ratios will be provided for the remaining proposals.

(5) Local Business Presence – 10 points

The City seeks opportunities for businesses in the Austin Corporate City Limits to participate on City contracts. A firm (Proposer or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

Points will be awarded through a combination of the Proposer's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of work as reflected in the Proposer's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. Specify if and by which definition the Proposer or Subcontractor(s) have a local business presence. Local Business Presence shall be scored according to this table:

<b>Team's Local Business Presence</b>	<b>Points Awarded</b>
Local business presence of 90% to 100%	10
Local business presence of 75% to 89%	8
Local business presence of 50% to 74%	6
Local business presence of 25% to 49%	4
Local presence of between 1 and 24%	2
No local presence	0

- ii. **Optional Inspections, Test Drive, and Demonstrations.** The City will score Proposals on the basis of the criteria listed above. The City may select a "short list" of Offerors based on those scores. "Short-listed" Offerors may be invited for inspections, test drive, or demonstrations with the City. The City reserves the right to re-score "short-listed" Proposals as a result, and to make award recommendations on that basis.

The City reserves the right to negotiate individual elements of any proposal and to reject any and all proposals.

**Section 0605: Local Business Presence Identification**

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

**OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.**

*NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).*

**\*USE ADDITIONAL PAGES AS NECESSARY\***

**OFFEROR:**

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

**SUBCONTRACTOR(S):**

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

**SUBCONTRACTOR(S):**

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No



## **Section 0700: Reference Sheet**

Responding Company Name \_\_\_\_\_

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

1. Company's Name \_\_\_\_\_  
Name and Title of Contact \_\_\_\_\_  
Project Name \_\_\_\_\_  
Present Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_  
Email Address \_\_\_\_\_

2. Company's Name \_\_\_\_\_  
Name and Title of Contact \_\_\_\_\_  
Project Name \_\_\_\_\_  
Present Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_  
Email Address \_\_\_\_\_

3. Company's Name \_\_\_\_\_  
Name and Title of Contact \_\_\_\_\_  
Project Name \_\_\_\_\_  
Present Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone Number (\_\_\_\_) \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_  
Email Address \_\_\_\_\_

**City of Austin, Texas**  
**Section 0800**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of

this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

CONTRACTOR	_____
Authorized Signature	_____
Title	_____

**Section 0835: Non-Resident Bidder Provisions**

Company Name \_\_\_\_\_

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: \_\_\_\_\_

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- (2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: \_\_\_\_\_ Which State: \_\_\_\_\_

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: \_\_\_\_\_

**CERTIFICATE OF INTERESTED PARTIES****FORM 1295**

1 of 3

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING**

1. Name of business entity filing form, and the city, state and country of the business entity's place of business.

PNC Equipment Finance, LLC  
Cincinnati, OH United States

Certificate Number:  
2017-283972

Date Filed:  
11/14/2017

2. Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

Date Acknowledged:

3. Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

209994000  
Golf Cars

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Bunch, Chales	Pittsburgh, PA United States	X	
	Chellgren, Paul	Pittsburgh, PA United States	X	
	Cheshire, Marjorie	Pittsburgh, PA United States	X	
	Demchak, William	Pittsburgh, PA United States	X	
	Feldstein, Andrew	Pittsburgh, PA United States	X	
	Hesse, Daniel	Pittsburgh, PA United States	X	
	James, Kay Coles	Pittsburgh, PA United States	X	
	Kelson, Richard	Pittsburgh, PA United States	X	
	Massaro, Anthony	Pittsburgh, PA United States	X	
	Pepper, Jane	Pittsburgh, PA United States	X	
	Shepard, Donald	Pittsburgh, PA United States	X	
	Steffes, Lorene	Pittsburgh, PA United States	X	
	Strigl, Dennis	Pittsburgh, PA United States	X	
	Usher, Thomas	Pittsburgh, PA United States	X	
	Ward, Michael	Pittsburgh, PA United States	X	
	Wasson, Gregory	Pittsburgh, PA United States	X	
	PNC Bank, NA	Pittsburgh, PA United States	X	
	Schaffer (employee), Doug	Pittsburgh, PA United States		X

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

2 of 3

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

PNC Equipment Finance, LLC  
Cincinnati, OH United States

Certificate Number:  
2017-283972

Date Filed:  
11/14/2017

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

209994000  
Golf Cars

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Dougherty (employee), Richard	Pittsburgh, PA United States		X
	Slusarczyk (employee), Sandra	Cincinnati, OH United States		X
	Burskey (counsel), Vincent	Pittsburgh, PA United States		X
	Thinnes (employee), David	Cincinnati, OH United States		X
	Lohman (employee), Amy	Cincinnati, OH United States		X
	Hoferer (employee), Dawn	Cincinnati, OH United States		X
	Gibbs (employee), Michelle	Cincinnati, OH United States		X
	Turner (employee), Tiffany	Cincinnati, OH United States		X
	Goldschmidt (employee), Taryn	Cincinnati, OH United States		X
	Williams (employee), Molly	Cincinnati, OH United States		X
	Sparks (employee), Tracy	Cincinnati, OH United States		X
	Furnish (employee), Jordan	Cincinnati, OH United States		X



# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

3 of 3

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

PNC Equipment Finance, LLC  
Cincinnati, OH United States

Certificate Number:  
2017-283972

Date Filed:  
11/14/2017

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.  
City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

209994000  
Golf Cars

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party. ☐

### 6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Tiffany M. Turner  
Notary Public, State of Ohio  
My Commission Expires 09-20-2020  
SEAL ABOVE

Michelle Gibbs  
Signature of authorized agent of contracting business entity

Sworn and subscribed before me, by the said Michelle Gibbs, this the 14th day of November, 2017, to certify which, witness my hand and seal of office.

Tiffany M Turner Notary  
Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath

## GOAL DETERMINATION REQUEST FORM

<b>Buyer Name/Phone</b>	Sandy Brandt/4-1783	<b>PM Name/Phone</b>	Idella Wilson/4-6718
<b>Sponsor/User Dept.</b>	PARD	<b>Sponsor Name/Phone</b>	Kevin Gomillion/4-9351
<b>Solicitation No</b>	RFP SMB0105	<b>Project Name</b>	Lease - Golf Carts and Utility Golf Carts
<b>Contract Amount</b>	\$1,275,000	<b>Ad Date (if applicable)</b>	8/7/17
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source*			
<input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input checked="" type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement			
<input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
Municipal lease agreement for golf carts and utility golf carts. Per Section 11.0 of MOU between Purchasing Office and SMBR, lease agreements are exempt from M/WBE Program.			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
No prior solicitation. Golf carts have been purchased in the past.			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
97538 - Golf Cart Rental or Lease (99%); 92815 - Automobile and Other Passenger Vehicles Maintenance, Repair (1%)			
Sandy Brandt		8/1/2017	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>			
<b>Date Received</b>	8/2/2017	<b>Date Assigned to BDC</b>	8/2/2017
<b>In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input checked="" type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input type="checkbox"/> No Goals	

## GOAL DETERMINATION REQUEST FORM

**This determination is based upon the following:**

- |  |   |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs       | <input type="checkbox"/> No availability of M/WBEs                  |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs         | <input type="checkbox"/> Sufficient subcontracting opportunities    |
| <input type="checkbox"/> Sole Source                               | Other   |

*If Other was selected, provide reasoning:*

### MBE/WBE/DBE Availability

There are no MBE/WBE firms in the major scope and only two MBE/WBE firms in the minor scope.

### Subcontracting Opportunities Identified

None identified.

Laura Moreno

**SMBR Staff**

**Signature/ Date**

**SMBR Director or Designee**

**Date**

**Returned to/ Date:**

## MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

Dated as of December, 2017

This Master Equipment Lease-Purchase Agreement (this “*Master Lease*”) is made and entered into by and between PNC Equipment Finance, LLC (“*Lessor*”) and the Lessee identified below (“*Lessee*”).

Lessee: City of Austin

### 1. Lease of Equipment.

Subject to the terms and conditions of this Master Lease, Lessor agrees to sell, transfer and lease to Lessee, and Lessee agrees to acquire, purchase and lease from Lessor, all Equipment described in each Schedule signed from time to time by Lessee and Lessor. Each Schedule signed and delivered by Lessor and Lessee pursuant to this Master Lease shall constitute a separate and independent lease and installment purchase of the Equipment therein described. This Master Lease is not a commitment by Lessor or Lessee to enter into any Lease not currently in existence, and nothing in this Master Lease shall be construed to impose any obligation upon Lessor or Lessee to enter into any proposed Lease, it being understood that whether Lessor or Lessee enter into any proposed Lease shall be a decision solely within their respective discretion.

### 2. CERTAIN DEFINITIONS.

All terms defined in the Lease are equally applicable to both the singular and plural form of such terms.

(a) “*Equipment*” means the property described in each Schedule, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto. (b) “*Lease*” means each Schedule and the terms and conditions of this Master Lease incorporated therein. (c) “*Lien*” means any security interest, lien, mortgage, pledge, encumbrance, judgment, execution, attachment, warrant, writ, levy, other judicial process or claim of any nature whatsoever by or of any person. (d) “*Schedule*” means each Lease Schedule signed and delivered by Lessee and Lessor, together with all addenda, riders, attachments, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented and, in the case of a Tax-Exempt Lease, in substantially the form attached to this Master Lease as *Lease Schedule A* or, in the case of a Taxable Lease, under which Lessee finances its acquisition and installment purchase of the related Equipment during the term of such Lease on a non-federally tax-exempt basis, in substantially the form attached to this Master Lease as *Lease Schedule B* or, in the case of a Taxable Lease under which Lessee rents the use of the Equipment for the term of the Lease subject to Lessee’s right to exercise its option to purchase such Equipment for its fair market value, in substantially the form attached to this Master Lease as *Lease Schedule C*. (e) “*Taxable Lease*” means a Lease that is not a Tax-Exempt Lease. (f) “*Tax-Exempt Lease*” means a Lease for which the interest component of Rent Payments is excludable from gross income of the owner or owners thereof for federal income tax purposes.

### 3. LEASE TERM.

The term of each Lease (“*Lease Term*”) commences on, and interest accrues from, the date identified in the related Schedule as the Commencement Date and, unless earlier terminated as expressly provided in the Lease, continues until Lessee’s payment and performance in full of all of Lessee’s obligations under such Lease.



4. RENT PAYMENTS.

4.1. For each Lease, Lessee agrees to pay to Lessor the rent payments ("*Rent Payments*") in the amounts and on the dates set forth in the *Payment Schedule A-1* attached to the Schedule (a "*Payment Schedule*"). A portion of each Rent Payment under a Tax-Exempt Lease is paid as and represents the payment of interest as set forth in the applicable Payment Schedule. Rent Payments under each Lease are payable out of the general and other funds of Lessee that are legally available therefor ("*Legally Available Funds*") in U.S. dollars, without notice or demand, at the office of Lessor identified below (or such other place as Lessor may designate from time to time in writing).

4.2. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 6 HEREOF, AND EXCEPT AS SET OUT IN ARTICLE VIII, SECTION 1 OF THE AUSTIN CITY CHARTER AND SECTION 2-8-3 OF THE AUSTIN CITY CODE AS THEY MAY BE SUBSEQUENTLY AMENDED, LESSEE'S OBLIGATION TO PAY RENT PAYMENTS UNDER EACH LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS AND SHALL NOT BE SUBJECT TO ANY SETOFF, DEFENSE, COUNTERCLAIM, ABATEMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER, INCLUDING (WITHOUT LIMITATION) BY REASON OF EQUIPMENT FAILURE, DISPUTES WITH THE VENDOR(S) OR MANUFACTURER(S) OF THE EQUIPMENT OR LESSOR, ACCIDENT OR ANY UNFORESEEN CIRCUMSTANCES.

**4.3. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent Payments under each Lease shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained in any Lease constitute a pledge of the full faith and credit or taxing power of Lessee.**

4.4. If Lessor receives any Rent Payment from Lessee after its due date, Lessee shall pay Lessor as set forth in the Texas Prompt Payment Act, currently codified at Chapter 2251 of the Texas Government Code.

5. DELIVERY; ACCEPTANCE; FUNDING CONDITIONS.

5.1. Lessor will not be responsible for any expenses related to the transportation, delivery and installation of all Equipment to the location specified in the Schedule ("*Location*") by Equipment suppliers ("*Suppliers*") selected by Lessee.

5.2. Lessee shall accept Equipment for purposes of the related Lease as soon as it has been delivered and is operational. Lessee shall evidence its acceptance of any Equipment by signing and delivering to Lessor the applicable Schedule. If Lessee signs and delivers a Schedule and if all Funding Conditions have been satisfied in full, then Lessor will (a) pay or cause to be paid the costs to acquire and install the Equipment as stated in the Schedule ("*Purchase Price*") to the applicable Supplier or (b) reimburse Lessee for all or any portion of the Purchase Price to the extent previously paid by Lessee, in either case as Lessee shall direct.

5.3. Lessor shall have no obligation to pay any Purchase Price unless all reasonable conditions established by Lessor ("*Funding Conditions*") have been satisfied, including, the following: (a) Lessee has signed and delivered to Lessor the Schedule and its related Payment Schedule; (b) no Event of Default or Non-Appropriation Event shall have occurred and be continuing under any Lease; (c) the Equipment is reasonably satisfactory to Lessor and is free and clear of any Liens (except Lessor's Liens); (d) all representations of Lessee in the Lease remain true, accurate and complete; (e) the amount (if any) that Lessor may require in advance that Lessee apply to the payment of Equipment costs has been paid; and (f) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor: (1) evidence of insurance coverage or self-insurance required by the Lease; (2) an opinion of Lessee's counsel; (2) reasonably detailed invoices for the Equipment; (3) Uniform Commercial Code (UCC) financing statements with respect to the Equipment; (4) to the extent applicable, certificates of title or certificates of origin (or

Commented [WC1]: Acceptable

applications therefor) noting Lessor's interest thereon; (5) copies of resolutions by Lessee's governing body, duly authorizing the Lease and incumbency certificates for the person(s) who will sign the Lease; (6) for a Tax-Exempt Lease only, such documents and certificates as Lessor may request relating to federal tax-exemption of interest payable under such Lease, including (without limitation) IRS Form 8038-G or 8038-GC and evidence of the adoption of a reimbursement resolution or other official action in the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty days prior to the date on which the Funding Conditions are satisfied; and (7) such other documents and information previously identified by Lessor.

6. TERMINATION UPON NON-APPROPRIATION EVENT.

6.1. For each Lease, Lessee represents and warrants that (a) it has appropriated and budgeted Legally Available Funds to make all Rent Payments required pursuant to such Lease for the remainder of the fiscal year in which the Lease Term commences; ~~and~~ (b) it currently intends to make Rent Payments for the full Lease Term as scheduled on the applicable Payment Schedule so long as funds are appropriated for each succeeding fiscal year by its governing body; ~~and (c) during the ten fiscal years prior to the date of the applicable Lease, its governing body has not failed (for whatever reason) to appropriate amounts sufficient to pay all obligations that were due and owing on multi-year financing agreements. Lessee reasonably believes, as of the date of this Master Lease and any Lease entered into pursuant to this Master Lease, that monies in an amount sufficient to make all Rent Payments can and will lawfully be appropriated and made available therefor;~~ and (c) during the ten fiscal years prior to the date of the applicable Lease, its governing body has not failed (for whatever reason) to appropriate amounts sufficient to pay its obligations that are subject to annual appropriation. Lessee reasonably believes that moneys in an amount sufficient to make all Rent Payments can and will lawfully be appropriated and made available therefor.

6.2. If Lessee's governing body fails to appropriate sufficient funds in any fiscal year for Rent Payments and other amounts to be paid under a Lease in the next succeeding fiscal year, then a "Non-Appropriation Event" shall have occurred. If a Non-Appropriation Event occurs, then: (a) Lessee shall give Lessor written notice at least 10 calendar days prior to the end of the then current fiscal year of such Non-Appropriation Event and provide written evidence of such failure by Lessee's governing body; (b) on the Return Date, Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the affected Lease, at Lessee's sole expense, in accordance with Section 21 hereof; and (c) the affected Lease shall terminate on the Return Date without penalty or expense to Lessee, provided, that Lessee shall pay all Rent Payments and other amounts payable under the affected Lease for which funds shall have been appropriated, and provided further, that Lessee shall pay month-to-month rent at the rate set forth in the affected Lease for each month or part thereof that Lessee fails to return the Equipment under this Section 6.2. "Return Date" means the first business day following the last day of the fiscal year ~~quarter~~ for which appropriations were made for the Rent Payments due under a Lease.

7. NO WARRANTY BY LESSOR.

LESSEE ACQUIRES AND LEASES THE EQUIPMENT UNDER EACH LEASE "AS IS." LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE EQUIPMENT UNDER ANY LEASE. LESSOR DOES NOT REPRESENT THE MANUFACTURER, SUPPLIER, OWNER OR DEALER, AND LESSEE SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR AS TO THE EQUIPMENT'S VALUE, DESIGN, CONDITION, USE, CAPACITY OR DURABILITY. LESSEE AGREES THAT REGARDLESS OF CAUSE, LESSOR IS NOT RESPONSIBLE FOR, AND LESSEE WILL NOT MAKE ANY CLAIM AGAINST LESSOR FOR, ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT INCURRED BY LESSEE IN CONNECTION WITH THE EQUIPMENT UNDER ANY LEASE. NEITHER THE MANUFACTURER, SUPPLIER OR DEALER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE MANUFACTURER, SUPPLIER OR DEALER IS LESSOR'S AGENT OR HAS ANY AUTHORITY TO SPEAK FOR LESSOR OR TO BIND LESSOR IN ANY WAY. For and during the Lease Term under each Lease, Lessor assigns to Lessee

**Commented [BTM2]:** Pending discussion of delegation process.

**Commented [BTM3]:** I decided to take a shot at this language. Please feel free to revise if this doesn't fully reflect your comments.

**Commented [WC4R3]:** Provided the City can assure itself that this is true, the language would be acceptable as modified

**Commented [BTM5]:** It is my understanding that funding is an annual process, so shouldn't this be fiscal year? Quarterly terminations are an issue for us.

**Commented [WC6R5]:** The fiscal year will always end 9/30; rent payments are paid in advance quarterly and do not line up with the City's fiscal quarters. In the event of a non-appropriation, if the Return Date is the end of the fiscal year, the City would likely be in the position of having prepaid rent for an entire quarter but not having the benefit of that rent payment for the entire quarter. This presents use of municipal funds issues for the City, because the City is charged with adequately assuring that it receives the full value of its expenditure.



any manufacturer's or Supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased by Lessor in accordance with Lessee's specifications from Suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or Supplier's product warranties or guaranties, (d) no manufacturer or Supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or Supplier or any representative of said parties shall not be binding upon Lessor.

8. TITLE; SECURITY INTEREST.

8.1. Upon Lessee's acceptance of any Equipment under a Lease, title to such Equipment shall vest in Lessee, subject to Lessor's security interest therein and all of Lessor's other rights under such Lease including, without limitation, Sections 6, 20 and 21 hereof.

8.2. As collateral security for Lessee's obligations to pay all Rent Payments and all other amounts due and payable under each Lease and to perform and observe all covenants, agreements and conditions (direct or indirect, absolute or contingent, due or to become due or existing or hereafter arising) of Lessee under such Lease, Lessee hereby grants to Lessor a first priority, exclusive security interest in any and all of the Equipment (now existing or hereafter acquired) under each Lease, and any replacements thereof. Lessee agrees to execute and deliver to Lessor all necessary documents to evidence and perfect such security interest, including, without limitation, Uniform Commercial Code (UCC) financing statements and any amendments thereto and certificates of title or certificates of origin (or applications thereof) noting Lessor's interest thereon.

Commented [WC7]: Acceptable

9. PERSONAL PROPERTY.

All Equipment is and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon.

10. MAINTENANCE AND OPERATION.

Lessor acknowledges that Lessee has or will enter into a maintenance and repair agreement with the Supplier or Suppliers, and Lessor will have no responsibility for maintenance or operation of any equipment. Lessee shall be solely responsible to: (a) repair and maintain all Equipment in good condition and working order, in accordance with manufacturer's instructions, and supply and install all replacement parts or other devices when required to so maintain the Equipment or when required by applicable law or regulation, which parts or devices shall automatically become part of the Equipment; (b) use and operate all Equipment solely for the purpose of performing one or more governmental functions of Lessee and in a careful manner in the normal course of its operations and only for the purposes for which it was designed in accordance with the manufacturer's warranty requirements; and (c) comply with all laws and regulations relating to the Equipment. If any Equipment is customarily covered by a maintenance agreement, Lessee will furnish Lessor with a maintenance agreement by a party reasonably satisfactory to Lessor. Lessor agrees that the Supplier of any individual Equipment is deemed an acceptable party to provide maintenance and repair services for any Equipment covered by this Lease. No maintenance or other service for any Equipment will be provided by Lessor. Lessee will not make any alterations, additions or improvements ("Improvements") to any Equipment without Lessor's prior written consent unless the Improvements may be readily removed without damage to the operation, value or utility of such Equipment, and any such Improvements not removed prior to the termination of the applicable Lease shall remain property of Lessee and, if the termination occurs due to non-appropriation or termination, shall be removed prior to returning the Equipment to Lessor.

Commented [WC8]: Acceptable

11. LOCATION; INSPECTION.

Lessor acknowledges that the Equipment covered under any Lease consists solely of electric golf carts and electric utility carts, which are of a highly mobile nature. Lessor further acknowledges that Lessee's operational needs as a governmental entity, and Lessee's intended use of the Equipment, necessitate the ability of Lessee to place the Equipment in service at any property owned or operated by Lessee. Lessor hereby consents to the use of any Equipment at any property owned or operated by Lessee. Upon reasonable notice to Lessee, Lessor may enter the Location or elsewhere during normal business hours to inspect the Equipment, provided that: (1) any person acting on behalf of Lessor who seeks to enter onto any property owned or operated by Lessee has provided proof of insurance coverage in the types and amounts acceptable to Lessee; and (2) Lessee retains the right at all times to remove any person or persons acting on behalf of Lessor from any property owned or operated by Lessee to the extent any such person acts contrary to Lessee's established health, safety, or security policies and procedures for the applicable property.

12. LIENS, SUBLEASES AND TAXES.

12.1. Lessee shall keep all Equipment free and clear of all Liens except those Liens created under each Lease. Lessor acknowledges that the nature of the Equipment and Lessee's intended use of the equipment involves short-term or temporary rental of most or all of the Equipment to customers of Lessee's public golf operations. Lessor consents to Lessee's use of any Equipment in any manner fairly contemplated by the nature of the Equipment, provided that Lessee maintains an applicable rental policy with respect to the Equipment and the Equipment is rented out only to Lessee's customers in the manner set out in that rental policy. Lessee shall not otherwise sublet or lend any Equipment or otherwise permit it to be used by anyone other than Lessee or Lessee's employees.

12.2. Lessor acknowledges that Lessee is a tax exempt governmental entity. Upon request by Lessor, Lessee will provide a valid tax exemption certificate evidencing Lessee's tax-exempt status. ~~Lessee shall pay when due all Taxes that may now or hereafter be imposed upon: any Equipment or its ownership, leasing, rental, sale, purchase, possession or use; any Lease; or any Rent Payments or any other payments due under any Lease. If Lessee fails to pay such Taxes when due, Lessor shall have the right, but not the obligation, to pay such Taxes. If Lessor pays any such Taxes, then Lessee shall, upon demand, immediately reimburse Lessor therefor. "Taxes" means present and future taxes, levies, duties, assessments or other governmental charges that are not based on the net income of Lessor, whether they are assessed to or payable by Lessee or Lessor, including, without limitation (a) sales, use, excise, licensing, registration, titling, gross receipts, stamp and personal property taxes and (b) interest, penalties or fines on any of the foregoing.~~

**Commented [BTM9]:** I would like to propose keeping this language and adding at the start "If a determination is made at any time that the Equipment is subject to Tax"

13. RISK OF LOSS.

13.1. Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part from any reason whatsoever ("*Casualty Loss*"). No Casualty Loss to any Equipment shall relieve Lessee from the obligation to make any Rent Payments or to perform any other obligation under any Lease. To the extent any loss or damage to Equipment is covered for an applicable Casualty Loss by either third-party liability insurance or by first party property insurance other than Lessee's self-insurance program, proceeds of such insurance recovery will be applied to Lessee's obligations under this Section 13.

13.2. If a Casualty Loss occurs to any Equipment, Lessee shall, within a reasonable time period, notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, repair the same.

13.3. If Lessor determines that any item of Equipment has suffered a Casualty Loss beyond repair ("*Lost Equipment*"), then Lessee shall either: (a) immediately replace the Lost Equipment with similar equipment in good repair, condition and working order free and clear of any Liens (except Lessor's Liens) and deliver to Lessor a

purchase order, bill of sale or other evidence of sale to Lessee covering the replacement equipment, in which event such replacement equipment shall automatically be Equipment under the applicable Lease, or (b) on the next scheduled Rent Payment due date, pay Lessor (i) all amounts owed by Lessee under the applicable Lease, including the Rent Payment due on such date, plus (ii) an amount equal to the applicable Termination Value set forth in the Payment Schedule to the applicable Lease, all provided that such amounts have been duly appropriated by Lessee's governing body. If Lessee is making such payment with respect to less than all of the Equipment under a Lease, then Lessor will provide Lessee with the pro rata amount of the Termination Value to be paid by Lessee with respect to the Lost Equipment.

13.4. To the extent of Lessee's liability under applicable law, Lessee shall bear the risk of loss for, and shall pay directly, any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorney's fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of any Lease. Lessee shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses (including attorney's fees), damages or losses which arise directly from events occurring after any Equipment has been returned by Lessee to Lessor in accordance with the terms of the applicable Lease or which arise directly from the gross negligence or willful misconduct of Lessor.

#### 14. INSURANCE.

14.1. (a) Lessee at its sole expense shall at all times keep all Equipment insured against all risks of loss or damage from every cause whatsoever (including collision in the case of vehicles) for an amount not less than the Termination Value of the Equipment under each Lease. Lessor shall be named as loss payee with respect to all insurance covering damage to or loss of any Equipment, and the proceeds of any such insurance shall be payable to Lessor as loss payee to be applied as provided in Section 13.3. (b) The Total Amount Financed as set forth on the applicable Payment Schedule does not include the payment of any premium for any liability insurance coverage for bodily injury and/or property damage caused to others and no such insurance will be purchased by Lessor. (c) Lessee at its sole expense shall at all times carry public liability and property damage insurance in amounts reasonably satisfactory to Lessor protecting Lessee and Lessor from liabilities for injuries to persons and damage to property of others relating in any way to any Equipment. Lessor shall be named as additional insured with respect to all such public liability and property damage insurance, and the proceeds of any such insurance shall be payable first to Lessor as additional insured to the extent of its liability, and then to Lessee.

14.2. All insurers shall be reasonably satisfactory to Lessor. Lessee shall promptly deliver to Lessor satisfactory evidence of required insurance coverage and all renewals and replacements thereof. Each insurance policy will require that the insurer give Lessor at least 30 days' prior written notice of any cancellation of such policy and will require that Lessor's interests remain insured regardless of any act, error, misrepresentation, omission or neglect of Lessee. The insurance maintained by Lessee shall be primary without any right of contribution from insurance which may be maintained by Lessor.

14.3. If Lessee is self-insured under an actuarially sound self-insurance program that is acceptable to Lessor with respect to equipment such as the Equipment under a Lease, such self-insurance program will satisfy the requirements set out in Sections 14.1 and 14.2 of this Lease. Lessee shall maintain during the Lease Term of such Lease such actuarially sound self-insurance program and shall no more than annually provide evidence thereof in form and substance satisfactory to Lessor upon request by Lessor.

#### 15. PURCHASE OPTION.

Upon 30 days' prior written notice by Lessee to Lessor, and so long as there is no Event of Default then existing, Lessee shall have the option to purchase all, but not less than all, or any portion of the Equipment subject to a

Lease on any Rent Payment due date by paying to Lessor all Rent Payments then due (including accrued interest, if any) plus the Termination Value ~~prorated as applicable~~, set forth on the Payment Schedule to the applicable Lease for such date. Upon satisfaction by Lessee of such purchase conditions, Lessor shall release its Lien on such Equipment and Lessee shall retain its title to such Equipment "AS-IS, WHERE-IS," without representation or warranty by Lessor, express or implied, except for a representation that such Equipment is free and clear of any Liens created by Lessor.

Commented [WC10]: Acceptable

16. LESSEE'S REPRESENTATIONS AND WARRANTIES.

With respect to each Lease and the Equipment subject thereto, Lessee hereby represents and warrants to Lessor that:

(a) Lessee has full power, authority and legal right to execute and deliver the Lease and to perform its obligations under the Lease, and all such actions have been duly authorized by appropriate findings and actions of Lessee's governing body;

(b) the Lease has been duly authorized, executed and delivered by Lessee and constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Lease is authorized under, and the authorization, execution and delivery of the Lease complies with, all applicable federal, state and local laws and regulations (including, but not limited to, all open meeting, public bidding and property acquisition laws) and all applicable judgments and court orders;

(d) the execution, delivery and performance by Lessee of its obligations under the Lease will not result in a breach or violation of, nor constitute a default under, any agreement, lease or other instrument to which Lessee is a party or by which Lessee's properties may be bound or affected;

(e) there is no pending, or to the best of Lessee's knowledge threatened, litigation of any nature that may have a material adverse effect on Lessee's ability to perform its obligations under the Lease; and

(f) Lessee is duly organized and legally existing as a political subdivision, municipal corporation or similar public entity under the Constitution and laws of the State in which it is located and will do or cause to be done all things necessary to preserve and keep in full force and affect its existence as such.

17. TAX COVENANTS APPLICABLE ONLY TO TAX-EXEMPT LEASES; TAX INDEMNITY PAYMENTS.

Lessee hereby covenants and agrees that:

(a) ~~Lessor contends that~~ This Master Lease is entered into by the parties based upon an expectation that the Lessor can exclude the interest component of the Rent Payments under each Tax-Exempt Lease from federal gross income. Lessee covenants and agrees with respect to each Tax-Exempt Lease that it will (i) complete and timely file an information reporting return with the Internal Revenue Service ("IRS") in accordance with Section 149(e) of the Internal Revenue Code of 1986 (the "Code"); (ii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy IRS guidelines for permitted management contracts, as the same may be amended from time to time; and (iii) comply with all provisions and regulations applicable to establishing and maintaining the excludability of the interest component of the Rent Payments under each Tax-Exempt Lease from federal gross income pursuant to Section 103 of the Code.

Commented [WC11]: Acceptable

(b) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and approved by Lessee, which approval Lessee shall not unreasonably withhold, that Lessor may not exclude the interest component of any Rent Payment under a Tax-Exempt Lease from federal gross income because Lessee breached a covenant contained herein, then ~~Lessee shall pay to Lessor, within 30 days after Lessor notifies Lessee of such determination, the amount which, with respect to Rent Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all Rent Payments under such Tax-Exempt Lease due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after-tax yield on the transaction evidenced by such Tax-Exempt Lease (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event with respect to a Tax-Exempt Lease, it shall pay additional rent to Lessor on each succeeding Rent Payment due date in such amount as will maintain such after-tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this subsection (b) shall be conclusive (absent manifest error) the Lease will immediately terminate and Lessee will deliver all Equipment subject to that Lease to Lessor within five business days. Notwithstanding anything in a Tax-Exempt Lease to the contrary, any payment that Lessee is required to make pursuant to this subsection (b) shall be made only from Legally Available Funds.~~

**Commented [BTM12]:** This change is being discussed internally.

~~Prior to extending any amounts under an applicable Lease, Lessor has satisfied or will satisfy itself that such Lease is and will remain a Tax-Exempt Lease.~~

This Section 17 shall be inapplicable and of no force or effect with respect to any Taxable Lease.

#### 18. ASSIGNMENT.

18.1. Lessee shall not sell, assign, transfer, pledge, hypothecate or grant any Lien on, nor otherwise dispose of, any Lease or any Equipment or any interest in any Lease or Equipment.

18.2. Lessor may assign its rights, title and interest in and to any Lease or any Equipment, and/or may grant or assign a its security interest in any Lease and its Equipment, in whole or in part, to any party at any time and from time to time with written notice to with Lessee ~~its prior consent~~. Any such assignee or lien holder (an "Assignee") shall have all of the rights of Lessor under the applicable Lease, EXCEPT FOR THE OFFSET AND OTHER RIGHTS SET OUT IN ARTICLE VIII, SECTION 1 OF THE AUSTIN CITY CHARTER AND SECTION 2-8-3 OF THE AUSTIN CITY CODE AS THEY MAY BE SUBSEQUENTLY AMENDED, LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR. Unless otherwise agreed by Lessee in writing, any such assignment transaction shall not release Lessor from any of Lessor's obligations under the applicable Lease. An assignment or reassignment of any of Lessor's right, title or interest in a Lease or its Equipment shall be enforceable against Lessee only after Lessee receives a written notice of assignment that discloses the name and address of each such Assignee. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code with respect to Tax-Exempt Leases and Section 163(f) of the Code with respect to Taxable Leases. Lessee agrees to acknowledge in writing any such assignments if so requested.

**Formatted:** Font: 10 pt

**Formatted:** Font: 10 pt

**Commented [WC13]:** Acceptable

18.3. Subject to the foregoing, each Lease inures to the benefit of and is binding upon the successors and assigns of the parties hereto.

#### 19. EVENTS OF DEFAULT.

For each Lease, "Event of Default" means the occurrence of any one or more of the following events as they may relate to such Lease: (a) Lessee fails to make any Rent Payment (or any other payment) as it becomes due in

accordance with the terms of the Lease, and any such failure continues for the applicable period of time set out in the Texas Prompt Payment Act, currently codified at Chapter 2251 of the Texas Government Code; (b) Lessee fails to perform or observe any of its obligations under Section 12.1, 14 or 18.1 hereof; (c) Lessee fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under the Lease and such failure is not cured within 30 days after receipt of written notice thereof by Lessor; (d) any statement, representation or warranty made by Lessee in the Lease or in any writing delivered by Lessee pursuant thereto or in connection therewith proves at any time to have been knowingly false, misleading or erroneous in any material respect as of the time when made, and Lessee knew or should have known of the falsity thereof; or (e) Lessee applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of its assets, or a petition for relief is filed by Lessee under any federal or state bankruptcy, insolvency, moratorium or similar law; or (f) Lessee shall be in default under any other Lease or under any other financing agreement executed at any time with Lessor.

**Commented [BTM14]:** If a representation is material and false, it shouldn't matter if there was knowledge involved, as PNCEF relied upon that statement

**Commented [BTM15]:** This cross default provision is still being discussed internally.

## 20. REMEDIES.

If any Event of Default occurs, then Lessor may, at its option, exercise any one or more of the following remedies:

(a) Lessor may require Lessee to pay (and Lessee agrees that it shall pay) all amounts then currently due under all Leases and all remaining Rent Payments due under all Leases during the fiscal year in effect when the default occurs together with accrued interest on such amounts at the respective rates provided in such Leases from the date of Lessor's demand for such payment;

(b) Lessor may require Lessee to promptly return all Equipment to Lessor in the manner set forth in Section 21 (and Lessee agrees that it shall so return the Equipment);

(c) Lessor may sell, lease or otherwise dispose of any Equipment, in whole or in part, in one or more public or private transactions, and if Lessor so disposes of any Equipment, then Lessor shall apply the entire proceeds of such disposition as follows: first, to pay costs that Lessor has incurred in connection with exercising its remedies; second, to payment of amounts that are payable by Lessee under clause (a) above; and then to payment of the Termination Value set forth in the applicable Payment Schedule for the last Rent Payment due date for the fiscal year in which the related default occurs; provided, however, that any disposition proceeds in excess of payment of all of the foregoing amounts shall be paid promptly by Lessor to Lessee;

**Commented [BTM16]:** This language describes the waterfall of payment obligations; (f) shows that out of pocket expenses are a recoverable expense.

**Commented [WC17]:** Acceptable

**Formatted:** Font: Not Italic

**Formatted:** Font: Italic

(d) Lessor may terminate, cancel or rescind any Lease as to any and all Equipment;

(e) Lessor may exercise any other right, remedy or privilege that may be available to Lessor under applicable law or, by appropriate court action at law or in equity, Lessor may enforce any of Lessee's obligations under any Lease; and/or

(f) Lessor may require Lessee to pay (and Lessee agrees that it shall pay, to the extent any duly appropriated funds are available for such payment) all out-of-pocket costs and expenses incurred by Lessor as a result (directly or indirectly) of a valid the Event of Default and/or of Lessor's valid and reasonable actions under this Section, including, without limitation, any attorney fees and expenses and any costs related to the repossession, return, safekeeping, storage, repair, reconditioning, or disposition of any Equipment.

None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to Lessor. Lessor's exercise of one or more remedies shall not preclude its exercise of any other remedy, except that Lessor may not seek any duplicative payments from Lessee to which Lessor may otherwise be entitled under multiple subsections. No delay or failure on the part of Lessor to exercise any remedy under any Lease shall operate as a waiver thereof,

nor as an acquiescence in any default, nor shall any single or partial exercise of any remedy preclude any other exercise thereof or the exercise of any other remedy.

21. RETURN OF EQUIPMENT.

If Lessor is entitled under the provisions of any Lease, including any valid termination thereof pursuant to Section 6 or 20 hereof, to obtain possession of any Equipment or if Lessee is obligated at any time to return any Equipment, then (a) title to the Equipment shall vest in Lessor immediately upon Lessor's valid and properly-given notice thereof to Lessee, and (b) Lessee shall, at its sole expense and risk, immediately de-install, disassemble, pack, crate, insure and return the Equipment to Lessor (all in accordance with applicable industry standards) at any location in the State of Texas selected by Lessor. Such Equipment shall be in the same condition as when received by Lessee (reasonable wear, tear and depreciation resulting from normal and proper use excepted), shall be in good operating order and maintenance as required by the applicable Lease, shall be free and clear of any Liens (except Lessor's Lien) and shall comply with all applicable laws and regulations. Until Equipment is returned as required above, all terms of the applicable Lease shall remain in full force and effect including, without limitation, obligations to pay Rent Payments and to insure the Equipment. Lessee agrees to execute and deliver to Lessor all documents reasonably requested by Lessor to evidence the transfer of legal and beneficial title to such Equipment to Lessor and to evidence the termination of Lessee's interest in such Equipment.

22. LAW GOVERNING; ~~UCC ARTICLE 2A WAIVER~~.

(a) Each Lease shall be governed by the laws of the state in which Lessee is located (the "State").

23. NOTICES.

All notices to be given under any Lease shall be made in writing and either personally delivered or mailed by certified mail to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notices shall be deemed to have been received five (5) days subsequent to mailing if sent by regular or certified mail, or on the next business day if sent by overnight courier, or on the day of delivery if delivered personally.

24. FINANCIAL INFORMATION; INDEMNITY; POWER OF ATTORNEY.

24.1. Within 30 days after their completion for each fiscal year of Lessee during any Lease Term, Lessee will deliver to Lessor upon Lessor's request the publicly available Comprehensive Annual Financial Report of Lessee.

25. ANTI-MONEY LAUNDERING/INTERNATIONAL TRADE LAW COMPLIANCE.

Lessee represents and warrants to Lessor, as of the date of this Master Lease, the date of each advance of proceeds pursuant to this Master Lease, the date of any renewal, extension or modification of this Master Lease or any Lease, and at all times until this Master Lease and each Lease has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (b) the proceeds of any Lease will not be used to fund any operations in, finance any investments or activities in, or, make any

payments to, a Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (c) the funds used to repay any Lease are not derived from any activity known by Lessee at the time of their undertaking to be unlawful activity; and (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by any Anti-Terrorism Laws. Lessee covenants and agrees that it shall immediately notify Lessor in writing upon the occurrence of a Reportable Compliance Event.

As used herein: “Anti-Terrorism Laws” means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; “Compliance Authority” means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; “Covered Entity” means Lessee; “Reportable Compliance Event” means that any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, relating to or in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law specifically related to this Master Lease, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; “Sanctioned Country” means a country subject to a sanctions program maintained by any Compliance Authority; and “Sanctioned Person” means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

#### 26. USA PATRIOT ACT NOTICE.

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each lessee that opens an account. What this means: when Lessee opens an account, Lessor will ask for the business name, business address, taxpayer identifying number and other information that will allow Lessor to identify Lessee, such as organizational documents. For some businesses and organizations, Lessor may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

#### 27. SECTION HEADINGS.

All section headings contained herein or in any Schedule are for convenience of reference only and do not define or limit the scope of any provision of any Lease.

#### 28. EXECUTION IN COUNTERPARTS.

This Master Lease and each Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument; *provided, however*, that only Counterpart No. 1 of each Lease (including the terms and conditions of this Master Lease incorporated therein by reference) shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

#### 29. ENTIRE AGREEMENT; WRITTEN AMENDMENTS.

This Master Lease and each Lease and other documents or instruments executed by Lessee and Lessor in connection therewith constitute the entire agreement between the parties with respect to the lease of the Equipment covered thereby, and such Lease shall not be modified, amended, altered or changed except with the written consent of

**Commented [BTM18]:** The issue here is that if a money laundering issue arises we have to be able to exit, and our regulators have clearly said that lack of knowledge, good faith, etc., are not defenses in this space.

**Commented [WC19]:** Acceptable if this can be appropriately narrowed to relate to AML concerns; the City has a variety of revenue sources that, at one time or another, may be subject to legal challenge entirely unrelated to AML and Anti-Terrorism concerns

**Commented [WC20]:** Acceptable



Lessee and Lessor. Any provision of any Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

(a) ~~Intentionally omitted~~

30. IMPORTANT INFORMATION ABOUT PHONE CALLS.

By providing telephone number(s) to Lessor, now or at any later time, Lessee authorizes Lessor and its affiliates and designees to contact Lessee regarding Lessee account(s) with Lessor or its affiliates, whether such accounts are Lessee individual accounts or business accounts for which Lessee is a contact, at such numbers using any means, including but not limited to placing calls using an automated dialing system to cell, VoIP or other wireless phone number, or leaving prerecorded messages or sending text messages, even if charges may be incurred for the calls or text messages. Lessee consents that any phone call with Lessor may be monitored or recorded by Lessor.

City of Austin ,  
as Lessee

PNC Equipment Finance, LLC,  
as Lessor

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Lease Schedule A (Tax-Exempt)

Dated as of ~~December~~ November 10, 2017

This Lease Schedule No. 209994000 (this "*Schedule*") relates to the Master Equipment Lease-Purchase Agreement referenced below and, together with the terms and conditions of the Master Lease incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Master Lease. All terms and conditions of the Master Lease are incorporated herein by reference.

Master Equipment Lease-Purchase Agreement dated November 10, 2017.

1. *Equipment Description.* As used in the Lease, "*Equipment*" means all of the property described in the Payment Schedule attached to this Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.
2. *Rent Payments; Lease Term.* The Rent Payments to be paid by Lessee to Lessor, the Commencement Date of this Lease and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Schedule.
3. *Essential Use; Current Intent of Lessee.* Lessee represents that (a) the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; to continue this Lease; and to make Rent Payments so long as funds are appropriated by its governing body for the succeeding fiscal year.
4. *ACCEPTANCE OF EQUIPMENT.* AS BETWEEN LESSEE AND LESSOR, LESSEE AGREES THAT (a) LESSEE HAS RECEIVED AND INSPECTED ALL EQUIPMENT; (b) ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS, CONTRACTS AND SPECIFICATIONS; (c) LESSEE ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE "AS-IS, WHERE IS"; AND (d) LESSEE WAIVES ANY RIGHT TO REVOKE SUCH ACCEPTANCE (BUT MAINTAINS ANY RIGHTS IT MAY HAVE AGAINST THE SELLER OF THE EQUIPMENT).
5. *Re-Affirmation of the Master Lease Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Master Lease (particularly Sections 6.1 and 16 thereof) are true and correct as though made on the date of execution of this Schedule.

City of Austin City of Austin, as Lessee

PNC Equipment Finance, LLC, as Lessor

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

Formatted: Font: 10 pt

Commented [WC21]: Acceptable

*Printed Name*

*Printed Name*

*Title*

*Title*

Counterpart No.    of    manually executed and serially numbered counterparts. To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

**PAYMENT SCHEDULE A-1**

Attached to and made a part of that certain Lease Schedule No. 209994000 dated as of ~~November 10, 2017~~ by and between PNC Equipment Finance, LLC, as Lessor, and **City of Austin**, as Lessee.

Commencement Date: \_\_\_\_\_

~~1.~~ **EQUIPMENT LOCATION & DESCRIPTION:**

~~301 W 2nd St  
Austin, TX 78701  
Travis County~~

Quantity Description Serial No.

229 2018 New E-Z-GO TXT48v E Golf Cars

Together with all attachments, tooling, accessories, appurtenances, and additions thereto.

~~2.1.~~ **LEASE PAYMENT SCHEDULE:**

(a) Total Amount Financed: \$590,133.00

(b) Payment Schedule:

Payment Number	Date	Payment	Interest	Principal	Termination Amount*
1		\$39,218.54	\$1,560.48	\$37,658.06	\$569,049.19
2		\$39,218.54	\$1,468.64	\$37,749.90	\$533,180.22
3		\$39,218.54	\$1,376.06	\$37,842.48	\$497,025.95
4		\$39,218.54	\$1,282.75	\$37,935.79	\$460,584.12
5		\$39,218.54	\$1,188.70	\$38,029.84	\$423,852.44
6		\$39,218.54	\$1,093.90	\$38,124.64	\$386,828.59
7		\$39,218.54	\$998.35	\$38,220.19	\$349,510.27
8		\$39,218.54	\$902.04	\$38,316.50	\$311,895.13
9		\$39,218.54	\$804.96	\$38,413.58	\$273,980.80
10		\$39,218.54	\$707.11	\$38,511.43	\$235,764.91
11		\$39,218.54	\$608.48	\$38,610.06	\$197,245.05
12		\$39,218.54	\$509.06	\$38,709.48	\$158,418.81
13		\$39,218.54	\$408.86	\$38,809.68	\$119,283.75
14		\$39,218.54	\$307.85	\$38,910.69	\$79,837.41
15		\$39,218.54	\$206.05	\$39,012.49	\$40,077.33
16		\$39,218.54	\$103.43	\$39,115.11	\$1.00

City of Austin, as Lessee

PNC Equipment Finance, LLC, as Lessor

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**CERTIFICATE OF INCUMBENCY**

I, the undersigned, do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of City of Austin (“*Lessee*”), a political subdivision duly organized and existing under the laws of the State where Lessee is located, that I have the title stated below, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of Lessee holding the offices set forth opposite their respective names and are authorized on behalf of Lessee to enter into that certain Master Equipment Lease-Purchase Agreement dated December, 2017 (the “*Master Lease*”) and separate Lease Schedules relating thereto from time to time as provided in the Master Lease (collectively, the “*Schedules*”), each between Lessee and PNC Equipment Finance, LLC, as lessor.

Name	Title	Signature
Name	Title	Signature
Name	Title	Signature

IN WITNESS WHEREOF, I have duly executed this Certificate and affixed the seal of Lessee on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

LESSEE: City of Austin

_____ (Secretary/Clerk)	[SEAL]
Print Name: _____	

Official Title: \_\_\_\_\_  
(other than the person signing the documents)

**FORM OF OPINION OF LESSEE'S COUNSEL (PLEASE FURNISH THIS TEXT ON ATTORNEY'S LETTERHEAD)**

[To be dated the execution date of Lease Schedule No. 209994000]

**Commented [BTM22]:** I believe that this draft opinion was going to be further reviewed.

PNC Equipment Finance, LLC 995 Dalton Avenue  
Cincinnati, Ohio 45203

RE: Master Equipment Lease-Purchase Agreement dated November 10, 2017 and Lease Schedules thereto

Ladies and Gentlemen:

As an Assistant City Attorney counsel for the City of Austin ("Lessee"), I have examined the Master Equipment Lease-Purchase Agreement duly executed by Lessee and dated November 10, 2017 (the "Master Lease"), which has been incorporated by reference into Lease Schedule No. 209994000 dated November 10, 2017 (the "Original Lease Schedule"), each between Lessee and PNC Equipment Finance, LLC, as lessor ("Lessor"), the *Schedule A-1* attached to the Original Lease Schedule (the "Original Payment Schedule") and the proceedings taken by the governing body of Lessee to authorize on behalf of Lessee the execution and delivery of the Master Lease, the Original Lease Schedule, the Original Payment Schedule and all additional lease schedules and related payment schedules to be entered into pursuant to the Master Lease (each of which is herein referred to as an "Additional Lease Schedule") and to be executed and delivered by the same authorized officers on behalf of Lessee in substantially the same manner and in substantially the same form as the Original Lease Schedule. The Original Lease Schedule, which incorporates by reference the terms and conditions of the Master Lease, and the related Original Payment Schedule are herein collectively referred to as the "Lease." Any Additional Lease Schedule, which incorporates by reference the terms and conditions of the Master Lease, and the related payment schedule are herein collectively referred to as an "Additional Lease."

Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is duly organized and legally existing as a political subdivision, municipal corporation or similar public entity under the Constitution and laws of the State of Texas with full power and authority to enter into, and perform its obligations under, the Lease and each Additional Lease.
2. The Lease and each Additional Lease have each been duly authorized and have been or, with respect to each Additional Lease, will be, duly executed and delivered by Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Lease constitutes, and each Additional Lease will constitute, the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with their respective terms, except to the extent limited by State and federal law affecting creditor's remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights.
3. Lessee has complied with any applicable property acquisition laws and public bidding requirements in connection with the Lease, each Additional Lease and the transactions contemplated thereby.
4. To the best of my knowledge, there is no litigation or proceeding pending or threatened before any court, administrative agency or governmental body that challenges: the organization or existence of Lessee; the authority of its officers to enter into the Lease; the proper authorization, approval and execution of the Lease, any Additional Lease or any documents relating thereto; the appropriation of monies to make payments under the Lease or any Additional Lease; or the ability of Lessee otherwise to perform its obligations under the Lease

~~or any Additional Lease~~ and the transactions contemplated thereby.

5. The ~~resolution adopted by Lessee's~~authorization of Lessee's governing body ~~authorizing the~~to execution and delivery of the Master Lease, ~~and the Original Lease Schedule, the Additional Lease Schedules and certain other matters~~ was adopted at a meeting that was held in compliance with all applicable laws relating to the ~~holding of open and public meetings~~the Texas Open Meetings Act.
6. The entering into and performance of the Lease and each Additional Lease do not ~~and will not~~ violate any judgment, order, law or regulation applicable to Lessee, ~~or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment (as such term is defined in the Master Lease) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound.~~
7. The correct legal name of Lessee for purposes of the Uniform Commercial Code in effect in the State of Texas.

~~This opinion may be relied upon by purchasers and assignees of Lessor's interests in the Lease and each Additional Lease.~~

Very truly yours,

Attorney

**SELF-INSURANCE LETTER****[TO BE TYPED ON LESSEE'S LETTERHEAD]**

PNC Equipment Finance, LLC  
 995 Dalton Avenue  
 Cincinnati, Ohio 45203

RE: Master Equipment Lease-Purchase Agreement  
 dated as of November 10, 2017 and Lease Schedules thereto

Ladies and Gentlemen:

Under the above-referenced Lease Schedule, City of Austin as lessee ("*Lessee*"), is required to maintain certain insurance policies with respect to the Equipment subject thereto, *provided* that insurance policies are not required if Lessee has an actuarially sound self-insurance program that is acceptable to PNC Equipment Finance, LLC. This letter is for the purpose of describing Lessee's self-insurance program.

[Describe self-insurance program for property damage - whether a self-insurance fund or contingency fund is maintained; and whether there is an excess policy in which case an insurance authorization letter must be attached.]

[Describe self-insurance program for public liability risks - whether a self-insurance fund or contingency fund is maintained; whether the Lessee's public liability exposure is capped pursuant to a Tort Claims Act; and whether the Lessee maintains an excess liability policy, in which case an insurance authorization letter must be attached.]

Please do not hesitate to contact me if you have any questions concerning the self-insurance described in this letter.

Very truly yours,

City of Austin , as Lessee

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Commented [WC23]:** Reserved to Risk Management



## FINAL RECEIPT CERTIFICATE

LEASE SCHEDULE NO. 209994000

Dated: December, 2017

Reference is made to the above Lease Schedule ("Schedule") and to the Master Lease-Purchase Agreement ("Master Lease") identified in said Lease Schedule, which have been executed and delivered by the undersigned Lessee ("Lessee") and PNC Equipment Finance, LLC ("Lessor"). This Certificate ~~amends~~ and supplements the terms and conditions of the Lease Schedule and is hereby made a part of the Lease Schedule. Unless otherwise defined herein, capitalized terms defined herein, capitalized terms defined in the Master Lease or the Lease Schedule shall have the same meaning when used herein.

Notwithstanding anything to the contrary, express or implied, in the Master Lease (including the Schedules attached thereto), Lessee agrees as follows:

1. **ACCEPTANCE OF EQUIPMENT.** AS OF THE ACCEPTANCE DATE STATED BELOW AND AS BETWEEN LESSEE AND LESSOR, LESSEE HEREBY AGREES THAT: (A) LESSEE HAS RECEIVED AND INSPECTED ALL OF THE EQUIPMENT DESCRIBED IN THE LEASE SCHEDULE ("EQUIPMENT"); (B) ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS, CONTRACTS AND SPECIFICATIONS; (C) LESSEE ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE "AS-IS, WHERE-IS"; AND (D) LESSEE WAIVES ANY RIGHT TO REVOKE SUCH ACCEPTANCE (BUT MAINTAINS ANY RIGHTS IT MAY HAVE AGAINST THE SELLER OF THE EQUIPMENT).

ACCEPTANCE DATE: \_\_\_\_\_

2. **RENT PAYMENTS.** LESSEE HEREBY CONFIRMS THAT LESSEE WILL COMMENCE PAYMENT OF THE RENT PAYMENTS FOR THE EQUIPMENT IN THE AMOUNTS SPECIFIED IN LEASE SCHEDULE WITH THE FIRST RENT PAYMENT BEING DUE ON \_\_\_\_\_.

City of Austin  
("Lessee")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Commented [WC24]: Acceptable

Lease **Schedule A** (Tax-Exempt)

Dated as of November 14, 2017

Commented [BTM25]: Is this document is a duplicate?

This Lease Schedule No. 210096000 (this “*Schedule*”) relates to the Master Equipment Lease-Purchase Agreement referenced below and, together with the terms and conditions of the Master Lease incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Master Lease. All terms and conditions of the Master Lease are incorporated herein by reference.

Master Equipment Lease-Purchase Agreement dated November 10, 2017.

1. *Equipment Description.* As used in the Lease, “*Equipment*” means all of the property described in the Payment Schedule attached to this Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.
2. *Rent Payments; Lease Term.* The Rent Payments to be paid by Lessee to Lessor, the Commencement Date of this Lease and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Schedule.
3. *Essential Use; Current Intent of Lessee.* Lessee represents that (a) the use of the Equipment is essential to Lessee’s proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; to continue this Lease; and to make Rent Payments so long as funds are appropriated by its governing body for the succeeding fiscal year.
4. *ACCEPTANCE OF EQUIPMENT.* AS BETWEEN LESSEE AND LESSOR, LESSEE AGREES THAT (a) LESSEE HAS RECEIVED AND INSPECTED ALL EQUIPMENT; (b) ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS, CONTRACTS AND SPECIFICATIONS; ~~AND (c) LESSEE ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE “AS-IS, WHERE IS”; AND (d) LESSEE WAIVES ANY RIGHT TO REVOKE SUCH ACCEPTANCE.~~
5. *Re-Affirmation of the Master Lease Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Master Lease (particularly Sections 6.1 and 16 thereof) are true and correct as though made on the date of execution of this Schedule.

*City of Austin City of Austin, as Lessee*

*PNC Equipment Finance, LLC, as Lessor*

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Printed Name*

---

*Title*

---

*Title*

Counterpart No.    of    manually executed and serially numbered counterparts. To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

**PAYMENT SCHEDULE A-1****Commented [BTM26]:** Is this document a duplicate?

Attached to and made a part of that certain Lease Schedule No. 209994000 dated as of ~~November 10, 2017~~ by and between PNC Equipment Finance, LLC, as Lessor, and **City of Austin**, as Lessee.

Commencement Date: \_\_\_\_\_

1. ~~\_\_\_\_\_~~ EQUIPMENT LOCATION & DESCRIPTION:

~~301 W 2nd St  
Austin, TX 78701  
Travis County~~

Quantity	Description	Serial No.
229	2018 New E-Z-GO TXT48v E Golf Cars Together with all attachments, tooling, accessories, appurtenances, and additions thereto.	

2.1. LEASE PAYMENT SCHEDULE:

- (a) Total Amount Financed: \$590,133.00  
 (b) Payment Schedule: Lease Term is for 48 months with 16 (Sixteen) quarterly payments due in January, April, July and October of each year.

Payment Number	Date	Payment	Interest	Principal	Termination Amount*
1		\$39,218.54	\$1,560.48	\$37,658.06	\$569,049.19
2		\$39,218.54	\$1,468.64	\$37,749.90	\$533,180.22
3		\$39,218.54	\$1,376.06	\$37,842.48	\$497,025.95
4		\$39,218.54	\$1,282.75	\$37,935.79	\$460,584.12
5		\$39,218.54	\$1,188.70	\$38,029.84	\$423,852.44
6		\$39,218.54	\$1,093.90	\$38,124.64	\$386,828.59
7		\$39,218.54	\$998.35	\$38,220.19	\$349,510.27
8		\$39,218.54	\$902.04	\$38,316.50	\$311,895.13
9		\$39,218.54	\$804.96	\$38,413.58	\$273,980.80
10		\$39,218.54	\$707.11	\$38,511.43	\$235,764.91
11		\$39,218.54	\$608.48	\$38,610.06	\$197,245.05
12		\$39,218.54	\$509.06	\$38,709.48	\$158,418.81
13		\$39,218.54	\$408.86	\$38,809.68	\$119,283.75
14		\$39,218.54	\$307.85	\$38,910.69	\$79,837.41
15		\$39,218.54	\$206.05	\$39,012.49	\$40,077.33
16		\$39,218.54	\$103.43	\$39,115.11	\$1.00

City of Austin, as Lessee

PNC Equipment Finance, LLC, as Lessor

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**PAYMENT SCHEDULE A-1**

Attached to and made a part of that certain Lease Schedule No. 210096000 dated as of ~~November 14, 2017~~ by and between PNC Equipment Finance, LLC, as Lessor, and **City of Austin**, as Lessee.

Commencement Date: \_\_\_\_\_

~~1.~~ **EQUIPMENT LOCATION & DESCRIPTION:**

~~301 W 2nd St.  
Austin, TX 78701  
Travis County~~

Quantity	Description	Serial No.
80	2018 New E-Z-GO TXT48v E Golf Cars Together with all attachments, tooling, accessories, appurtenances and additions thereto	

~~2.~~ **1. LEASE PAYMENT SCHEDULE:**

- (a) Total Amount Financed: \$335,280.00  
 (b) Payment Schedule: Lease Term is for 40 months with 14 (Fourteen) quarterly payments due in January, April, July and October of each year.

Payment Number	Date	Payment	Interest	Principal	Termination*
1		\$25,269.00	\$887.34	\$24,381.66	\$320,225.29
2		\$25,269.00	\$827.18	\$24,441.82	\$296,747.46
3		\$25,269.00	\$766.53	\$24,502.47	\$273,082.73
4		\$25,269.00	\$705.40	\$24,563.60	\$249,229.59
5		\$25,269.00	\$643.79	\$24,625.21	\$225,186.58
6		\$25,269.00	\$581.68	\$24,687.32	\$200,952.17
7		\$25,269.00	\$519.08	\$24,749.92	\$176,524.82
8		\$25,269.00	\$455.98	\$24,813.02	\$151,903.02
9		\$25,269.00	\$392.38	\$24,876.62	\$127,085.21
10		\$25,269.00	\$328.28	\$24,940.72	\$102,069.84
11		\$25,269.00	\$263.66	\$25,005.34	\$76,855.32
12		\$25,269.00	\$198.53	\$25,070.47	\$51,440.08
13		\$25,269.00	\$132.88	\$25,136.12	\$25,822.51
14		\$25,269.00	\$66.70	\$25,202.30	\$1.00

City of Austin , as Lessee

PNC Equipment Finance, LLC, as Lessor

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

## FINAL RECEIPT CERTIFICATE

LEASE SCHEDULE NO. 210096000

Dated: ~~November 14~~, 2017

Reference is made to the above Lease Schedule (“Schedule”) and to the Master Lease-Purchase Agreement (“Master Lease”) identified in said Lease Schedule, which have been executed and delivered by the undersigned Lessee (“Lessee”) and PNC Equipment Finance, LLC (“Lessor”). This Certificate amends and supplements the terms and conditions of the Lease Schedule and is hereby made a part of the Lease Schedule. Unless otherwise defined herein, capitalized terms defined herein, capitalized terms defined in the Master Lease or the Lease Schedule shall have the same meaning when used herein.

Notwithstanding anything to the contrary, express or implied, in the Master Lease (including the Schedules attached thereto), Lessee agrees as follows:

1. **ACCEPTANCE OF EQUIPMENT.** AS OF THE ACCEPTANCE DATE STATED BELOW AND AS BETWEEN LESSEE AND LESSOR, LESSEE HEREBY AGREES THAT: (A) LESSEE HAS RECEIVED AND INSPECTED ALL OF THE EQUIPMENT DESCRIBED IN THE LEASE SCHEDULE (“EQUIPMENT”); (B) ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS, CONTRACTS AND SPECIFICATION; AND (C) LESSEE ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE “AS-IS, WHERE-IS”; ~~AND (D) LESSEE WAIVES ANY RIGHT TO REVOKE SUCH ACCEPTANCE.~~

ACCEPTANCE DATE: \_\_\_\_\_

2. **RENT PAYMENTS.** LESSEE HEREBY CONFIRMS THAT LESSEE WILL COMMENCE PAYMENT OF THE RENT PAYMENTS FOR THE EQUIPMENT IN THE AMOUNTS SPECIFIED IN LEASE SCHEDULE WITH THE FIRST RENT PAYMENT BEING DUE ON \_\_\_\_.

City of Austin (“Lessee”)

By: \_\_\_\_\_

Title: \_\_\_\_\_